

# EU-Korea Relations in a Changing World

EDITORS: Axel Marx, Jan Wouters, Woosik Moon,  
Yeongseop Rhee, Sunhee Park, Matthieu Burnay

A JOINT PROJECT BY:

Leuven Centre for Global Governance Studies (KU Leuven)  
Graduate School of International Studies (Seoul National University)



Co-funded by the European Union under the EU-Korea  
Public Diplomacy Program







# EU - KOREA RELATIONS IN A CHANGING WORLD

EDITED BY

Axel Marx  
Jan Wouters  
Woosik Moon  
Yeongseop Rhee  
Sunhee Park  
Matthieu Burnay

A Joint Project by:

Leuven Centre for Global Governance Studies (KU Leuven)  
Graduate School of International Studies (Seoul National University)



Co-funded by the European Union under the EU-Korea Public Diplomacy Program



Edited volume: *EU-Republic of Korea Relations in a Changing World*

Editors: Axel Marx, Jan Wouters, Woosik Moon, Yeonseop Rhee, Sunhee Park and Matthieu Burnay

© 2013 by the Editors and Contributors severally. No portion of this document may be reproduced without permission of the authors.



## TABLE OF CONTENTS

---

### **Introduction** **1**

*Axel Marx, Jan Wouters, Woosik Moon, Yeongseop Rhee, Sunhee Park, Kishil Yang*

1. Introduction
2. The Emergence and Development of EU – Republic of Korea Relations
3. Outline of the report
  - 3.1. EU-Republic of Korea cooperation: the Free Trade Agreement
  - 3.2. EU-Republic of Korea cooperation: regulatory and policy issues
  - 3.3. EU-Republic of Korea cooperation: regional and international issues

### **PART I: EU-REPUBLIC OF KOREA COOPERATION: THE FREE TRADE AGREEMENT**

#### **Korea – EU FTA : a blueprint for co-prosperity** **11**

*Chang-Sang Cho*

1. Introduction
2. Trade policies in Korea and the EU
  - 2.1. Korea's trade policy
    - 2.1.1. Overview
    - 2.1.2. FTA policies
  - 2.2. EU's trade policy (common commercial policy)
    - 2.2.1. Overview
    - 2.2.2. EU's new trade policy
    - 2.2.3. EU's new FTA policies
3. Korea-EU FTA
  - 3.1. Overview
  - 3.2. Major contents of the agreement
    - 3.2.1. Tariff elimination for industrial and agricultural goods
    - 3.2.2. Tackling non-tariff barriers (NTBS)
    - 3.2.3. Trade in services
    - 3.2.4. Intellectual property rights
    - 3.2.5. Government procurement
  - 3.3. Economic impact of the agreement
  - 3.4. Other benefits and opportunities
4. Directions of cooperation for co-prosperity
  - 4.1. Implementation of the agreement
  - 4.2. Major areas for socio-economic cooperation
  - 4.3. Cooperation at international level
  - 4.4. Cooperation for East Asia integration
5. Conclusion

#### **Regulatory cooperation for trade in services in the EU and US trade agreements with the Republic of Korea: How deep and how compatible?**

*Eugenia Laurenza and James Mathis*

**41**

1. Introduction
2. The US – Korea Free Trade Agreement (Korus)

- 2.1. Transparency
- 2.2. Regulatory Cooperation
  - 2.2.1. Domestic Regulation
  - 2.2.2. Recognition
- 2.3. Competition Policy
- 2.4. Institutional Aspects / Dispute Settlement.
- 3. The Eu – Korea FTA
  - 3.1. Transparency
  - 3.2. Regulatory Cooperation
    - 3.2.1. Domestic Regulation
    - 3.2.2. Mutual Recognition
  - 3.3. Competition Policy
  - 3.4. Institutional Aspects / Dispute Settlement
- 4. Discussion
  - 4.1. Transparency
    - 4.1.1. Publication And Right To Comment
    - 4.1.2. Right Of Inquiry And Response
    - 4.1.3. Administrative Reviews
    - 4.1.4. Sector-Specific Transparency Provisions
    - 4.1.5. Transparency Conclusions
  - 4.2. Regulatory Cooperation
    - 4.2.1. Domestic Regulation
    - 4.2.2. Sector-Specific Regulation Provisions
  - 4.3. Mutual Recognition
  - 4.4. Competition
  - 4.5. Institutional Aspects / Dispute Settlement
- 5. Conclusions

### **The climate change legal framework under the EU-Korea Free Trade Agreement: interaction between various levels of normativity**

*Nicolas Croquet*

67

- 1. Introduction
- 2. Context within which climate change concerns permeated the EU-Korea FTA
- 3. Hard law versus soft law
- 4. EU-Korea FTA's direct climate change provisions
  - 4.1. Substantive provisions
  - 4.2. Dispute settlement mechanism
  - 4.3. Preliminary assessment
- 5. EU-Korea FTA's indirect climate change provisions
  - 5.1. Substantive provisions
  - 5.2. Common dispute settlement mechanism
  - 5.3. Preliminary assessment
- 6. The 2010 cooperation agreement's climate change provisions
  - 6.1. Substantive provisions
  - 6.2. Dispute settlement mechanism
  - 6.3. Preliminary assessment
- 7. Implications of the various levels of normativity
- 8. Conclusion

### **The EU-Korea FTA and the Relaxation of Regulatory Measures in the Mechanical Engineering Industry**

*Bernadette Andreosso-O'Callaghan*

105

- 1. Importance of the mechanical engineering sector to the two economies

- 1.1. Broad performance indicators of the EU and Korean ME sectors
- 1.2. Trade performance in the ME sector
- 1.3. Impact in terms of future trade growth in the context of the FTA
2. Regulatory measures in the mechanical engineering sub sector
  - 2.1. Regulatory measures defined
  - 2.2. Regulatory measures and regulatory cooperation in the ME sector
    - 2.2.1. Regulatory measures in the Korean ME sector
    - 2.2.2. Regulatory measures in the EU ME sector
    - 2.2.3. Summary
3. Conclusions - policy implications

**The Power to Know is the Power to Affect. Tariff Concessions in the FTA between the EU and Korea**

*Bart Kerremans, Johan Adriaensen and Yf Reykers*

121

1. Introduction
2. Introducing the administration in the political economy of trade
3. Research Design
4. The Trade administrations and the drafting of the tariff schedules
5. Data Analysis
6. Findings and Discussion
7. Causes and effects of the findings
8. Conclusion

**PART II: EU-REPUBLIC OF KOREA COOPERATION: REGULATORY AND POLICY ISSUES**

**The European Union and the Republic of Korea: Regulatory approaches to arms trade and control and to counterterrorism**

*Ramon Pacheco Pardo and Shin Dongmin*

143

1. Introduction
2. Regulatory cooperation
3. European Union
  - 3.1. Legal framework in relation to arms trade and control
  - 3.2. Legal framework in relation to counterterrorism
4. Republic of Korea
  - 4.1. Legal framework in relation to arms trade and control
  - 4.2. Legal framework in relation to counterterrorism
5. Comparison between the European Union and the Republic of Korea
  - 5.1. Areas of convergence
  - 5.2. Areas of divergence
  - 5.3. Recommendations
6. Conclusion

**Assessing possibilities for enhanced EU-South Korea cooperation on chemical regulation**

*Katja Biedenkopf*

167

1. Introduction
2. EU and South Korean Chemicals Regulation
  - 2.1. Shortcomings of Prior Chemicals Regulatory Regimes
  - 2.2. Systematic and Comprehensive Approach
  - 2.3. Registration
  - 2.4. Responsibilities

- 2.5. Evaluation
- 2.6. Prioritisation
- 2.7. Authorisation and Restriction
- 2.8. Substances in Products
- 2.9. Communication in the Supply Chain
- 2.10. Legislative Structure
- 3. Policy Transfer and Convergence
  - 3.1. Adjustment and Competition
  - 3.2. Learning and Emulation
  - 3.3. Domestic Factors
- 4. Links Between South Korean and EU Chemical Regulation
  - 4.1. Adjustment and Competition
  - 4.2. Learning and Emulation
  - 4.3. Domestic Factors
- 5. Potential Areas for Strengthening South Korea-EU Cooperation
  - 5.1. Exchanging Experiences and Best Practices to Foster Learning
  - 5.2. Exploring of Options for the Sharing of Data Related to Policy Implementation
  - 5.3. Strengthening Research Collaboration
  - 5.4. Developing of a Structure of Formal and Informal Exchange
  - 5.5. Including EU Member States
- 6. Conclusions

### **Different paths towards the same goal? Comparing the implementation and performance of CO<sub>2</sub> emissions reduction regulations in the EU and South Korea**

*Stefan Niederhafner and Chan Song Lee*

**195**

- 1. Introduction
- 2. Theoretical concept and analytical framework
  - 2.1. Theoretical concept
  - 2.2. Analytical Framework
- 3. The EU ETS
  - 3.1. The bargaining phase during the 1990s - from taxes to markets
  - 3.2. Phase 0: the design and preparation phase 2000-2004
  - 3.3. Phase 1: 2005-2007
  - 3.4. Phase 2: 2008-2012
  - 3.5. Phase 3: 2013-2020
- 4. South Korea's Target Management System
  - 4.1. The bargaining phase – TMS vs. ETS
  - 4.2. Phase 0/1: The energy TMS 1998–2008
  - 4.3. Phase 2: the strengthened Energy TMS 2009
  - 4.4. Phase 3: Energy and GHG TMS 2010-2014
  - 4.5. Phase 4: ETS 2015-...
- 5. Comparison
- 6. Conclusions

### **CAMPUS Asia and its implications for university cooperation in Asia and EU: Korean perspective**

*Sang-Duk Choi*

**221**

- 1. Introduction
- 2. Present situation of Korean higher education
  - 2.1. Current issues in Korean higher education



- 2.2. Internationalization of higher education in Korea
3. Emergence of CAMPUS Asia Program
  - 3.1. Progress in the development of the CAMPUS Asia program
    - 3.1.1. The origins of the idea of CAMPUS Asia Program
    - 3.1.2. Progress in building consensus and framework for CAMPUS Asia
  - 3.2. Implementation of the pilot program of CAMPUS Asia
4. Analysis of Korean survey results
  - 4.1. Purpose and method of the survey
  - 4.2. Analysis of the survey results
5. Conclusion: The implications of CAMPUS Asia for university cooperation in Asia and Korea-EU

**The Republic of Korea's development cooperation policy: Assessing opportunities for European Union collaboration in a new global development cooperation architecture**

*Axel Marx and Jadir Soares*

**241**

1. Introduction
2. A New Development Cooperation Architecture
3. The rise of Korea in development cooperation: from recipient to donor
4. Development strategies and practices in a comparative perspective
  - 4.1. Objectives of development assistance
  - 4.2. Approach to development cooperation
  - 4.3. Recipient countries of aid
  - 4.4. Aid to which sectors
5. Assessment of potential Korea-EU collaboration in the context of triangular cooperation
6. Conclusion

**EU-Korea relations to promote regulatory cooperation in economic policies, in particular industrial development policies**

*Wolfgang Pape*

**269**

1. Introduction
2. EU industrial development policies
  - 2.1. *Background*
  - 2.2. *Current situation in the EU*
3. Korean industrial development policies
  - 3.1. *Background*
  - 3.2. *History*
  - 3.3. *Current situation in Korea*
4. EU-Korea Cooperation based on Agreements
5. Global contexts of EU-Korea relations
  - 5.1. *Korea-USA relations*
  - 5.2. *Korean relations with China and Japan*
6. Future potential of EU-Korea regulatory cooperation
7. Conclusion

**PART III: EU-REPUBLIC OF KOREA COOPERATION: REGIONAL AND INTERNATIONAL ISSUES**

**The European Union and Security on the Korean Peninsula : Collective security, confidence-building and arm control**

*Christoph Bluth and Neil Winn*

**289**

1. Introduction
2. The European experience with collective security: A Model for Korea?
3. Understanding the function of North Korea's nuclear programme in its policy towards outside powers
4. Understanding US policy towards the Korean peninsula
5. Dealing with North Korea: What is to be done?
6. Transference of norms: Going beyond simple institutionalism
7. Normative Power Europe and EU Foreign Policy: A Model for Engagement with North Korea?
8. Conclusion

**North Korea's Revealed Comparative Advantage (RCA) on the EU Market and its implications**

*Deok Ryong Yoon*

**305**

1. Introduction
2. North Korean Trade: Structure and Trend
  - 2.1. Trade
  - 2.2. Composition of Trading Goods
  - 2.3. North Korea's Trading Partners
3. North Korea's Revealed Comparative Advantage (RCA)
  - 3.1. North Korea's Export RCA to the World
  - 3.2. North Korea's Export RCA to the EU
4. North Korea's RCA Changes and the Role of EU-DPRK Trade
  - 4.1. North Korea's RCA on EU Market
  - 4.2. EU-DPRK Trade and its Implications
5. Conclusion

**Enlargement of ASEM : Focused on the Russian accession and its implication for Korea**

*Sunhee Park*

**325**

1. Introduction
2. Resurgence of regionalism and inter-regionalism
3. ASEM as bi-regional inter-regionalism
4. 2010 Enlargement: Shift from a Bi-regional to a Trans-regional Inter-regionalism?
5. Implication of Russian accession
6. Implication of Russian Accession to Korea
7. Conclusion

**The Future of EU-Korea Relations. Conclusions and Recommendations**

*Axel Marx and Jan Wouters*

**341**

## **List of Contributors**

Johan Adriaensen, *PhD-researcher, KU Leuven*

Bernadette Andreosso-O'Callaghan, *Director, Euro-Asia Centre, Professor of Economics, University of Limerick*

Katja Biedenkopf, *Assistant Professor of Political Science, University of Amsterdam*

Christoph Bluth, *Professor of International Studies, University of Leeds*

Matthieu Burnay, *Project Manager, Leuven Centre for Global Governance Studies, KU Leuven*

Chang-Sang Cho, *Assistant Secretary to the Republic of Korea's President for Green Growth*

Sang-Duk Choi, *Director, Office of Research Planning, Korean Educational Development Institute*

Nicolas Croquet, *Associate, McKenna Long & Aldridge LLP*

Shin Dongmin, *PhD Researcher, King's College London*

Bart Kerremans, *Associate Professor of International Relations and American Politics, KU Leuven*

Axel Marx, *Research Manager, Leuven Centre for Global Governance Studies, KU Leuven*

Eugenia Laurenza, *Associate, FratiniVergano-European Lawyers*

Chan Song Lee, *Researcher, Seoul National University*

James Mathis, *Associate Professor of International Law, University of Amsterdam*

Woo-sik Moon, *Member Monetary Policy Committee, Bank of Korea*

Stefan Niederhafner, *Associate Professor, Graduate School of International Studies, Seoul National University*

Ramon Pacheco Pardo, *Lecturer of European and International Studies, King's College London*

Wolfgang Pape, *Research Fellow, Centre for European Policy Studies*

Sunhee Park, *Professor of International Relations, Seoul National University*

Yeongseop Rhee, *Professor at Seoul National University*

Jadir Soares, *Junior Member, Leuven Centre for Global Governance Studies, KU Leuven*

Jan Wouters, *Director, Leuven Centre for Global Governance Studies, Professor of International Law, KU Leuven*

Neil Winn, *Senior Lecturer in European Studies, University of Leeds*

Kishil Yang, *Attorney of Law, Apex LLC, Seoul*

Deok Ryong Yoon, *Senior Research Fellow, Korea Institute International Economic Policy East Asia*





**EU - REPUBLIC OF KOREA RELATIONS IN A CHANGING WORLD:  
AN INTRODUCTION**

AXEL MARX

JAN WOUTERS

WOOSIK MOON

YEONGSEOP RHEE

SUNHEE PARK

KISHIL YANG

**1. INTRODUCTION**

The development of the European economy in terms of employment and growth is to a large extent sustained by exports. Having in mind the benefits of external trade for European companies, the Member States of the European Union (EU) have authorized the European Commission to negotiate new free trade agreements with Asian countries. India, the Republic of Korea (hereafter: 'Korea') and ASEAN countries were set as priorities. Korea is the EU's fourth trading partner outside Europe. In terms of both economic growth and strategic position, Korea represents the EU's best trade and political partner in Asia. In addition, the EU registers a trade surplus for several products such as auto parts, industrial machinery, medical equipment, chemicals and pharmaceuticals, and Korea represents one of the most important markets for EU agricultural products. From the political point of view, Korea can be considered as a key partner for important issues ranging from security (countering the proliferation of weapons of mass destruction; combating illicit trade in small arms and light weapons; combating terrorism) to economic issues (trade and investment; economic policy dialogue; business cooperation), environmental issues (climate change and chemical policy) and cooperation in regional and international organizations.

Relations between the two partners have been developing since 1960s, based on a market economy and on democratic values. This has resulted in the conclusion of two bilateral agreements: the Agreement on Co-operation and Mutual Administrative Assistance in Customs Matters (entered into force in 1997) and the Framework Agreement on Trade and Co-operation (entered into force on 1 April 2001). In April 2007, based on the positive output of decades of collaboration, the European Commission was authorized by the Member States to start negotiations for a Free Trade Agreement (FTA) with Korea. Since then, eight rounds of formal negotiations have taken place and on 6 October 2010 the FTA was signed during the EU-Republic of Korea Summit in Brussels. The EU-Republic of Korea FTA, being the first of the new generation of FTAs under the 'Global Europe' initiative, represents not only a showcase but also a tool for addressing the EU's competitiveness and sustainability in light of the Lisbon Strategy. Meanwhile both the Union and Korea committed themselves to upgrading the 2001 Framework Agreement to a strategic partnership.

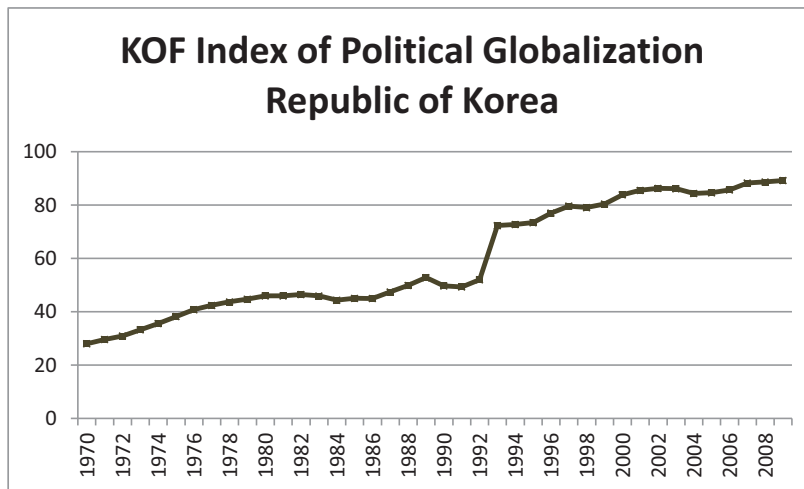
Against this background, the Leuven Centre for Global Governance Studies (University of Leuven) and the Graduate School of International Studies of Seoul National University, building on their longstanding cooperation, formed a partnership to jointly conduct a research project on EU-Korea cooperation which was generously funded by the European Commission under its Public Diplomacy programme. The goal of the project was to create an EU-Korea interdisciplinary and international project team that explored the possibilities for further cooperation between the EU and Korea on a set of interrelated policy issues. A central objective of this project was to investigate and promote additional opportunities for regulatory cooperation, learning, and emulation between the EU and Korea by providing state of the art information and analysis on key issues for EU and Korea.

The project drew upon the expertise of faculty from European and Korean universities. The current report brings together the papers and recommendations which were developed in the context of the project and which were discussed during two workshops, organized in Leuven and Seoul. This introduction further elaborates the development of EU-Korea relations and briefly introduces each contribution.

## **2. THE EMERGENCE AND DEVELOPMENT OF EU –KOREA RELATIONS**

Since its establishment in 1948 Korea's economic and political development has been remarkable (Cumings, 2005). Identified as one of the 'Four Asian Tigers' (along with Singapore, Taiwan and Hong Kong) it has been promoted as the quintessential example of what many authors refer to as the developmental state. The developmental state refers to the role played by state-planning and regulation in macroeconomic planning. In this model the state has a strong influence on macro-economic policy but also develops strategies for private sector development. Recent academic research has given significant attention to the role of the state and state-society relations for economic development (Altenburg; 2011; Amsden, 2001; Evans, 1995; Lin & Chang, 2009). Many of these studies feature Korea as a leading example. The remarkable rise of Korea is best illustrated by its steady economic growth exemplified by its impressive growth in GDP per capita.

Also internationally Korea has taken on a prominent role. Partially due to its export led economic growth, Korea has established itself as one of the leading international trading partners. In December 2011 Korea crossed the 1 trillion USD threshold in trade. In the last two decades trade has grown from 50% of GDP to 90% of GDP, which is much higher than other countries and regions such as China, EU, Japan and the US (Stangarone, 2011). Not only from an economic perspective but also from a political perspective Korea is enhancing its international position. One way to capture this is to look at its evolution on the KOF political globalization index (Dreher, 2006; Dreher et al., 2008). The KOF political globalization index captures the membership in international inter-governmental organizations, the number of international treaties which are signed and ratified by a country, the number of embassies across the world and participation in UN Security Council missions. Scores range from 0 to 100, 100 indicating a very high degree of political globalization and political international integration. Figure \*\* shows the evolution for Korea over the last 4 decades indicating a clear upward trend.



As a result of these developments it is not surprising that Korea is 1 of the 10 strategic partners of the EU. Although there is no clear definition of a strategic partnership and the idea grew out of ad hoc decisions, strategic partnerships are now the key conceptual framework for the EU's relations with the leading powers of the twenty-first century (Kundani, 2012). These strategic partnerships take place in an international context which is characterized by new forms of international network governance and regulation. These new forms of sometimes bilateral network governance are gaining increasing attention in the international literature (Slaughter, 2004; Martinez and Woods, 2011; Marx et al., 2011; Marx et. al, 2012).

The emergence of this strategic partnership is rooted in half a century of diplomatic relations between the EU and Korea. Diplomatic relations between the EU (then the EEC) and Korea were established in July 1963 and the permanent mission of Korea to the EEC was opened in November 1965.<sup>1</sup> Entering into the 1990s, the close cooperative relationship between the EU and Korea expanded and notably advanced with a rapid increase in trade and economic exchanges. For example, the EU and Korea signed a Framework for Trade and Cooperation (which was ratified in 2001) and a Joint Declaration on Political Dialogue in October 1996 under which a formal system for regular economic and political cooperation have been established. Further, the EU became an executive board member of the Korean Peninsula Energy Development Organization (KEDO) in 1997, broadening the bilateral cooperation into regional issues. In the first decade of the new millenium the relationship between the EU and Korea strengthened and intensified further, especially in economic terms, as trade and investment between them expanded remarkably. The EU has become the largest foreign investor to Korea, and the second largest trade partner of Korea. In order to further encourage trade and investment exchanges, the EU and Korea began negotiating for a bilateral FTA in 2007 and officially signed the FTA in October 2010 during the fifth bilateral summit held in Brussels. The FTA provisionally entered into force on 1 July 2011.<sup>2</sup> The EU and Korea also signed a new political framework agreement in May 2010 which will replace the 1996 framework as an effort to provide a legal and systemically framework to further encourage cooperation in all areas of bilateral and global issues, including, but not limited to, politics, society, culture, education and administration.

The remarkable expansion of cooperation between the EU and Korea may be attributed in part to the strong mutual governmental dedication that has been continued over the years. The EU and Korea have held summits six times since 2002 (Copenhagen in 2002, Hanoi in 2004, Helsinki in 2006, Seoul in 2009, Brussels in 2010 and Seoul in 2012). The meeting usually took place during the biennial ASEM meeting, except in 2008 when they did not have a summit. Instead, the EU and Korea had a summit in Seoul in May 2009. This fourth summit was significant because it was held for the first time on a stand-alone basis. In addition, the leaders met in Cannes at the G20 summit on 3 November 2011 and agreed during the meeting to further advance the existing strategic bilateral partnership.<sup>3</sup> A subsequent sixth summit was held on 28 March 2012. Each of these summits further advanced EU-Korea relations as is exemplified in the press releases following the summits.

During the fourth summit on 23 May 2009, leaders had in-depth discussions on the future aims and vision of their bilateral relationship. They expressed their interest to upgrade the existing bilateral cooperative relationship into a level of a strategic partnership by concluding the FTA and the new Framework Agreement.<sup>4</sup> They also participated in the signing ceremony of an agreement on cooperation in the field of competition policy and had an opportunity to review the progress of implementation of the agreement on scientific and technological cooperation. Further, the leaders agreed to enhance bilateral cooperation in the areas of education and culture in order to increase mutual understanding and promote exchanges. Regarding regional and global issues, the leaders noted that they share fundamental values, and expressed determination to set up joint efforts to further strengthen cooperation and to respond to global challenges.

EU and Korean leaders again agreed to upgrade their bilateral relations at their fifth summit on 6 October 2010.<sup>5</sup> They expressed their satisfaction with the positive development of the overall relationship based on shared values and common interests and agreed to further develop their relationship into a strategic partnership. They welcomed the signing of both the EU-Korea FTA and the new Framework Agreement and noted that the two agreements will provide a basis for strengthening EU-Korea cooperation on bilateral as well as regional and global challenges, including global economic recovery, climate change, non-proliferation and disarmament of nuclear weapons.

During the sixth summit on 28 March 2012, leaders stressed that the full implementation of the EU-Korea FTA is necessary in order to further facilitate bilateral economic cooperation and emphasized the value of laying solid foundations for practical cooperation in the fields of education, science, research and innovation. They also agreed to actively explore possibilities for closer cooperation to deal with continued regional and global challenges including regional conflicts, climate challenges and global economic challenges.<sup>6</sup>

This brief overview shows the many different policy areas in which further collaboration is explored. In addition to the summit meetings, there have been bilateral meetings held at different levels of government over the years. First, at a ministerial level, a Korea-EU Troika foreign ministers' meeting has been held annually in the margins of the UN General Assembly and ASEAN regional forum since 1990. In 2008, Korean and EU Troika ministers discussed about bilateral issues such as the bilateral FTA and framework agreement, as well as measures to mutually respond to and cooperate against regional and global challenges including North Korea's nuclear programme.<sup>7</sup> In May 2010, the EU and Korean foreign ministers agreed in Brussels to actively cooperate to



realize the early signing of the EU-Korea FTA.<sup>8</sup> In addition, the ministers exchanged opinions on the global support measures for the reconstruction of Afghanistan and discussed the challenges faced by Korean peninsula and the advancements of harmonization efforts of the EU. In December 2011, the EU and Korean foreign ministers exchanged opinions on issues of mutual interest, and agreed to further enhance economic and trade cooperation to maximize the effects of the bilateral trade in the future.<sup>9</sup> In addition, they agreed to hold high level political talks regularly and to strengthen the cooperation in the areas of humanity and development.

In line with the effort to upgrade the relationship to a strategic partnership as agreed at the 2010 bilateral summit, high-level political talks led by vice-ministerial-level officials have been held annually since 2011 to exchange views on bilateral political issues and global challenges. The first high-level political talks were held on 21 November 2011 in Seoul and were led by the Deputy Secretary General of the European External Action Service and the First Vice Minister of MOFAT.<sup>10</sup> The two delegates discussed several bilateral, regional and global issues including expansion of high-level officer exchanges and cooperation for the final ratification of the FTA and the early ratification of the new framework agreement. They also agreed to establish a channel to enhance cooperation in human rights and development cooperation issues. The second high-level talks were held on 12 October 2012 in Brussels.<sup>11</sup> The two delegations had in-depth discussions on ways to further develop the bilateral strategic partnership, and other bilateral, regional and global issues including cyber security, non-proliferation and disarmament, and piracy eradication.

Furthermore, on 12 October 2011 the first trade committee meeting under the bilateral FTA was held. Under the FTA, the committee meeting is to be held annually with the trade EU Commissioner and Korea trade minister as head delegates. The trade committee has seven specialized committees, seven working groups and an intellectual property dialogue under its umbrella.<sup>12</sup> The holding of the first trade committee meeting was significant in that it signaled the mutual readiness and dedication to fully implement the bilateral FTA. The second trade committee meeting was held in Brussels on 16 October 2012.<sup>13</sup> The two trade representative agreed to continue to cooperate for the full implementation of the bilateral FTA and evaluated the effects of the FTA and the activities of the 15 sub-committees for the past first year. They also discussed the measures to facilitate customs and trade, and other issues related to implementation of the FTA.

### **3. OUTLINE OF THE REPORT**

The emergence and development of EU-Korea relations shows the importance of economic and trade relations between the EU and Korea. It also shows that the partnership is not limited to economic issues and covers a wide range of policy issues. In this project and report we aimed to capture and cover this breadth of cooperation. As a result, the contributions discuss in depth the FTA, different policy areas (security (arms trade, chemical regulation, environmental regulation, education, development co-operation and industrial policy) and inter-regional and international issues. Consequently the report consists out of three parts. Each contribution ends with a discussion of possible policy recommendations following the analysis.

### 3.1. EU-Korea cooperation: the Free Trade Agreement

A first set of papers deals with the EU-Korea Free Trade Agreement (FTA) which was labeled by H.E. Karel De Gucht, current European Commissioner for Trade, as “the most ambitious trade agreement ever negotiated by the EU”.

The first papers discuss in depth the EU-Korea FTA. The paper by **Chang-Sang Cho** ‘*Korea – EU FTA : a blueprint for co-prosperity*’ provides an extensive and in-depth discussion of the FTA, its structure and its provisions. The paper by **Eugenia Laurenza and James Mathis** on ‘*Regulatory cooperation for trade in services in the EU and US trade agreements with the Republic of Korea: How deep and how compatible?*’ focuses on trade in services in the EU-Korea FTA and compares it to the US-Korea Free Trade Agreement which was signed in 2011. The paper examines the subjects of transparency, regulatory cooperation, competition law and policy, and their institutional context, to assess the depth of integration generated and the resulting level of compatibility that results between the agreements. The paper by **Nicolas Croquet** on ‘*The climate change legal framework under the EU-Korea Free Trade Agreement: interaction between various levels of normativity*’ focuses specifically on the provisions in relation to climate change and provides a critical reflection on these provisions and their soft law nature. The paper describes the legal and policy context within which environmental and climate change provisions have permeated the EU-Korea FTA. Subsequently it distinguishes the main differences between hard and soft law under legal theory. This distinction is then applied to a detailed analysis of the EU-Korea FTA and its climate change provisions. The paper by **Bernadette Andreosso-O’Callaghan** on ‘*The EU-Korea FTA and the relaxation of regulatory measures in the mechanical engineering industry*’ analyses a specific case study on the regulatory implication of the EU-Korea FTA. The FTA aims at dealing with a number of subtle non-tariff regulatory barriers. Of particular significance to the case of the mechanical engineering industry are regulatory obstacles such as technical regulations and standards, restrictions to access raw materials, and intellectual property rights issues. The objective of this paper is therefore to assess the extent and impact of these regulatory obstacles in the mechanical engineering industry. The rationale for focusing on the mechanical engineering industry stems in particular from its relative importance in terms of two way trade between the two entities. Last but not least, the paper by **Bart Kerremans, Johan Adriaensen and Yf Reykers** ‘*The power to know is the power to affect. Tariff concessions in the FTA between the EU and Korea*’ opens up the black box of trade negotiations and analyzes the role of trade administrations in the negotiations of trade agreements. They aim to better understand how specific policy outcomes in the EU-Korea FTA came about and the role of trade administrations herein. In order to analyze this empirically they focus on a specific aspect of the FTA, namely the tariff implementation schedules.

### 3.2. EU-Korea cooperation: regulatory and policy issues

A second set of papers focuses on different areas for political and regulatory cooperation with a focus on the areas of security (arms trade and control), chemical regulation, environmental regulation, education, development co-operation and industrial policy.

The paper by **Ramon Pacheco Pardo and Shin Dongmin** on '*The European Union and the Republic of Korea: Regulatory approaches to arms trade and control and to counterterrorism*' analyzes arms trade and control and counterterrorism. For decades, European Union and Korea have been developing their regulatory approaches to establish domestic frameworks conducive towards better regulation of arms trade and control and counterterrorism. The paper discusses at length the emergence, development, convergence and divergence of these regulatory approaches. The paper by **Katja Biedenkopf** '*Assessing possibilities for enhanced EU-South Korea cooperation on chemical regulation*' investigates chemicals regulation in the EU and Korea. Both jurisdictions have shown an increased level of regulatory activity in recent years with the EU developments preceding the Korean by only a few years. Both regulatory approaches have commonalities but also differences. This paper argues that EU chemicals regulation had effects on policy developments in Korea and it explores opportunities for enhanced, mutually beneficial EU-Korean cooperation. The paper by **Stefan Niederhafner and Chan Song Lee** '*Different paths towards the same goal? Comparing the implementation and performance of CO<sub>2</sub> emissions reduction regulations in the EU and South Korea*' looks at environmental policy. The paper compares the EU Emission Trading System (ETS) and South Korea's Target Management System (TMS). The paper explores the regulatory framework of both regulatory settings, explains the decisions that lead to the different approaches against the backdrop of their institutional, political and cultural contexts, and evaluates overall performance. The paper by **Sang-Duk Choi** '*CAMPUS Asia and its implications for university cooperation in Asia and EU: Korean perspective*' focuses on educational policy and describes a major new initiative in the context of higher education. The purpose of this paper is to examine the Korean experiences in the recent formation of the CAMPUS (Collective Action for Mobility Programme of Universities Students) Asia as a trilateral- university cooperation between Korea, Japan and China and assesses the potential for a possible expansion of similar programs to other regions such as the EU. The paper by **Axel Marx and Jadir Soares** on '*The Republic of Korea's development cooperation policy: Assessing opportunities for European Union collaboration in a new global development cooperation architecture*' analyses Korean development cooperation and compares it to the EU in order to identify complementarities and differences. This analysis is framed in the broader post-Busan context of triangular cooperation and the OECD agenda on the division of labour in development co-operation. The paper by **Wolfgang Pape** '*EU-Korea relations to promote regulatory cooperation in economic policies, in particular industrial development policies*' compares regulatory approaches to industrial development in Europe and Korea. It provides a general and historical overview of developments with regard to industrial policy within the context of the literature on distinct forms of capitalism. The paper argues that regulatory approaches to industrial development policies differ not only over time but also considerably in concept and practice between the EU and Korea. In order to understand this, the paper analyzes their divergent socio-cultural backgrounds and evolutions to date.

### 3.3. EU-Republic of Korea cooperation: regional and international issues

The paper by **Christoph Bluth and Neil Winn** on '*The European Union and Security on the Korean Peninsula : Collective security, confidence-building and arm control*' focuses on the Democratic People's Republic of Korea (DPRK) as a security threat. It assesses the actions taken since the 1990s, mainly by the United States and Korea, to mitigate the perceived threat through multilateral negotiations to achieve disarmament in return for political and economic support for the DPRK. The paper argues that these different efforts have failed and that one of the key problems of efforts to engage with North Korea is the preoccupation with the nuclear programme and security in which coercive means dominated. The concept of "normative power" that a significant body of literature has identified with the EU offers the potential for an alternative form of engagement with North Korea. The paper by **Deok Ryong Yoon** on '*North Korea's Revealed Comparative Advantage (RCA) on the EU Market and its implications*' examines North Korea's trade patterns and analyzes whether or not North Korea's trade recovery is based on changes in economic fundamentals as demonstrated by other transition economies. The research measures North Korea's comparative advantage using Bela Balassa's indices of revealed comparative advantage (RCA) to measure its structural change in trade. The paper provides a review of North Korea's current trade structure. It calculates and analyses the RCA indices of North Korean trade to the world market and the EU. It discusses the implications of the RCA indices and the possible role of the EU in North Korea's reform policies. Finally, the paper by **Sunhee Park** on '*Enlargement of ASEM : Focused on the Russian accession and its implication for Korea*' explores the ASEM's enlargement policy centered on the implication of 2010 enlargement with special emphasis on the Russian accession to ASEM and Korea's position on this issue. The paper argues that the 2010 enlargement was not aimed at changing ASEM's working process but needs to be understood in a wider geo-political context in which China and the US play an important role. In addition, the paper analyzes the outcomes of Russia's accession to ASEM in relation to stabilized energy supply by the Russia-North Korea-South Korea natural gas pipeline and the easing of tension on the Korean Peninsula.

The report ends with an extensive conclusion and discussion of the different contributions by **Axel Marx and Jan Wouters**. On the basis of the different contributions the authors aim to draw some more consolidated and general recommendations.



## Acknowledgements

We thank Akiko Nakajima (Embassy of Japan), Ann Sofie Cloots (KU Leuven), Chan Song Lee (John's Hopkin's University), Chongsup Kim (Seoul National University), Edith Drieskens (KU Leuven), Fraser Cameron (EU-Asia Centre), Hwy-Chang Moon (Seoul National University), Jong Yoon Doh (Yonsei University), Junha Kang (Hongik University), Keumsoon Lee (Korea Institute for National Unification), Kyriakos Revelas (European External Action Service), Marcel Rooijen (European External Action Service), Hosuk-Lee Makiyama (ECIPE), Mimi Kim (Free University of Brussels), Sungho Lee (Korean Ministry of Foreign Affairs and Trade), Tomasz Kozlowski (Delegation of the EU to Korea), Wissenbach Uwe (Delegation of the EU tot he Republic of Korea), Yeongseop Rhee (Seoul National University) and Yoo-Duk Kang (Korea Institute for International Economic Policy) for their active participation in the workshops and roundtable discussing the results of the project.

Special thanks to Kathleen Mouling, Colleen Carroll and Dominique de Brabanter from the Leuven Centre for Global Governance Studies and You-Joung Hong from Seoul National University for their excellent help and support in executing this project.

Finally, we would like to thank the project officer at the European Commission Daniel Van Assche for his support during this project.

## Endnotes

<sup>1</sup> Mission of the Republic of The Republic of Korea to the EU (MRKE), "The Republic of Korea-EU Political Relations", available at <http://bel.mofat.go.kr/english/eu/bel/bilateral/eu/index.jsp>

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:168:0001:0001:EN:PDF>

<sup>3</sup> Ministry of Foreign Affairs and Trade ("MFAT"), "Local Information of Europe", available at [http://www.mofat.go.kr/countries/europe/local/index.jsp?menu=m\\_40\\_50\\_10](http://www.mofat.go.kr/countries/europe/local/index.jsp?menu=m_40_50_10) in The Republic of Korea

<sup>4</sup> Joint Press Statement, available at [http://www.eeas.europa.eu/the-republic-of-korea-south/docs/summit\\_jps\\_2009\\_en.pdf](http://www.eeas.europa.eu/the-republic-of-korea-south/docs/summit_jps_2009_en.pdf)

<sup>5</sup> Joint Press Stateement, available at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/er/116900.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/116900.pdf)

<sup>6</sup> Joint Press Statement, available at [http://europa.eu/rapid/press-release-pres-12-140\\_en.htm](http://europa.eu/rapid/press-release-pres-12-140_en.htm)

<sup>7</sup> MOFAT, Press Release, available at

<http://www.mofat.go.kr/webmodule/htsboard/template/read/korboardread.jsp?typeID=6&boardid=235&seqno=315103>

<sup>8</sup> MOFAT, Press Release, available at

<http://www.mofat.go.kr/webmodule/htsboard/template/read/korboardread.jsp?typeID=6&boardid=235&seqno=327793>

<sup>9</sup> MOFAT, Press Release, available at

<http://www.mofat.go.kr/webmodule/htsboard/template/read/korboardread.jsp?typeID=6&boardid=9795&seqno=338584>

<sup>10</sup> MOFAT, Press Release, available at

<http://www.mofat.go.kr/webmodule/htsboard/template/read/korboardread.jsp?typeID=6&boardid=235&seqno=337976>

<sup>11</sup> MOFAT, Press Release, available at

[http://www.mofat.go.kr/webmodule/htsboard/template/read/engreadboard.jsp?typeID=12&boardid=302&seqno=311772&c=&t=&pagenum=1&tableName=TYPE\\_ENGLISH&pc=&dc=&wc=&lu=&vu=&iu=&du=](http://www.mofat.go.kr/webmodule/htsboard/template/read/engreadboard.jsp?typeID=12&boardid=302&seqno=311772&c=&t=&pagenum=1&tableName=TYPE_ENGLISH&pc=&dc=&wc=&lu=&vu=&iu=&du;);

<http://www.mofat.go.kr/webmodule/htsboard/template/read/korboardread.jsp?typeID=6&boardid=235&seqno=344498>

<sup>12</sup> European Commission, Bilateral Relations with South The Republic of Korea, available at

<http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/the-republic-of-korea/>

<sup>13</sup> MOFAT, Press Release, available at

[http://www.mofat.go.kr/webmodule/htsboard/template/read/korboardread.jsp?typeID=6&boardid=235&seqno=344571&c=&t=&tableName=TYPE\\_DATABOARD&px=&dc=&wc=&lu=&vu=&iu=&du](http://www.mofat.go.kr/webmodule/htsboard/template/read/korboardread.jsp?typeID=6&boardid=235&seqno=344571&c=&t=&tableName=TYPE_DATABOARD&px=&dc=&wc=&lu=&vu=&iu=&du)

## References

- Altenburg, T. (2011) 'Industrial Policy in Developing Countries', *Discussion Paper German Development Institute*.
- Amsden, A. (2001) *The Rise of "The Rest". Challenges to the West from Late-Industrializing Economies*. Oxford: Oxford University Press
- Cumings, B. (2005) *Korea's Place in the Sun: A Modern History*. New York: W.W. Norton
- Dreher, Axel (2006): Does Globalization Affect Growth? Evidence from a new Index of Globalization, *Applied Economics*, 38, 10, pp. 1091-1110.
- Dreher, Axel, Noel Gaston and Pim Martens (2008), *Measuring Globalisation – Gauging its Consequences*. New York: Springer
- Evans, P. (2005) *Embedded Autonomy*. Princeton: Princeton University Press
- Kundnani, H. (2012) 'Democracy and the EU's Strategic Partnerships', European Council on Foreign Relations. Available at: [http://ecfr.eu/content/entry/commentary\\_democracy\\_and\\_the\\_eus\\_strategic\\_partnerships](http://ecfr.eu/content/entry/commentary_democracy_and_the_eus_strategic_partnerships)
- Lin, J. & HJ Chang (2009) 'Should Industrial Policy in Developing Countries Conform to Comparative Advantage or Defy It? A Debate Between Justin Lin and Ha-Joon Chang', in, *Development Policy Review*, 5, pp. 483-502
- Marx, A, Kitaoka, K., O'Reilly, C. & J. Fuentes (editors)(2012) *Networks for Prosperity. Connecting Development Knowledge Beyond 2015*. Vienna: UNIDO and Leuven Centre for Global Governance Studies.
- Marx, A, Kitaoka, K. & A. MacGillivray (eds.)(2011) *Networks for Prosperity. Achieving Millennium Development Goals through Knowledge Sharing*. Vienna: UNIDO and Leuven Centre for Global Governance Studies.
- Martinez-Dias, L. & N. Woods (2009) *Networks of Influence*. Oxford: Oxford University Press
- Slaughter, A.-M. (2004) *A New World Order: Government Networks and the Disaggregated State*. Princeton: Princeton University Press
- Stangarone, T. (2011) ,Korea Crosses the 1 Trillion Threshold in Trade', in, *The Peninsula*.

## **KOREA-EU FTA: A BLUEPRINT FOR CO-PROSPERITY**

CHANG-SANG CHO

### **1. INTRODUCTION**

On 1 July 2011, the Korea-EU Free Trade Agreement (hereinafter “the Agreement”) entered into force, marking the beginning of a new era in Korea-EU trade relations. More than 16 months have passed since the Agreement entered into force. Although Korea and the European Union (hereinafter “both Parties”) had been able to commence official negotiations in May 2007 when Korea and the US had been in the endgame for a deal, the Agreement took effect earlier than the Korea-US FTA (hereinafter “the KORUS FTA”) which passed congresses of both sides in November 2011. It was originally assumed in Korea that the ratification of the Agreement would take a great deal of time as the EU consists of 27 member countries, thus will go through a long and time-consuming process in the parliaments for decision making. The EU side, however, completed its process much more quickly than expected. Meanwhile, the Korean side expedited its internal process for the ratification, although unexpectedly it had to spend some three months for correcting the mistranslation of the text of the agreement. Considering other FTAs which Korea has already sealed, the ratification of the Agreement was done extraordinarily fast. Especially, there was stark contrast between the Agreement and the KORUS FTA in the ratification. The KORUS FTA took such a long time of more than six years while the Agreement spent almost four years finishing the process, even if the Agreement and the KORUS FTA have little difference in the contents of both agreements, as is elaborated in Chapter 2 of this paper. It was largely due to not only all-out efforts by the EU, but mutual trust based on clear vision for everlasting cooperation as well.

As both Parties share common values of democracy and free markets, the Agreement will be a reliable platform for bringing bilateral relationship between both Parties to a higher level. This sets in the same vein with what Jean Monnet put it earlier, “nothing is lasting without institutions.” As the first FTA the EU has concluded with an Asian partner, the Agreement is expected to support the EU in securing a foothold in this part of the world and serve as EU’s springboard to the rapidly growing Asian market.<sup>1</sup> The Agreement can be compared to a highway constructed for comprehensive cooperation between Both Parties, not just a typical FTA for trade and investment. The strategic values of the Agreement extend far beyond the sphere of trade and investment: along with the Korea-EU Framework Agreement signed in May 2010, it will lay a solid institutional framework to the new relationship between both Parties and contribute to the establishment of a “strategic partnership” as was declared upon at the Korea-EU Summit held in Brussels in October 2010. The FTA also sends a timely signal to the rest of the world that Both Parties are unwaveringly committed to the ideals of trade liberalisation, even in times of global economic difficulties.

This paper addresses what trade policies have encouraged both parties to reach the deal and ratify the Agreement within a short period of time in the chapter 2. Additionally, in the chapter 3, what benefits the

Agreement is able to bring to Europeans companies is dealt with, followed by how the Agreement can substantially contribute to much closer economic cooperation between the two parties in the chapter 4.

## **2. TRADE POLICIES IN KOREA AND THE EU**

Both Korea and the EU make good use of trade policy to pioneer overseas markets and to arrange investment protection mechanisms for their companies, coming up with appropriate policies to adapt changing global economic environment. This chapter sees how trade policies in Korea and the EU have altered to date, and what trade and FTA policies of both sides have made the Agreement possible to be born.

### **2.1 KOREA'S TRADE POLICY**

#### **2.1.1 OVERVIEW**

Korea became the 9<sup>th</sup> country in the world in December 2011 which has achieved the trade volume of US\$1 trillion, now targeting US\$2 trillion. Strategic trade liberalisation and pioneering overseas markets have been a key factor making Korea develop its economy for the last 50 years. In addition, its successful liberalisation policies played a pivotal role for Korea to recover quickly from the East Asian financial crisis of 1997 and the global financial crisis of 2008.

A close look at Korean trade policies since the 1960s reveals that Korea's export promotion policies were first formed in the early 1960s through the comprehensive export promotion programme<sup>2</sup> rather than free trade, and this stance was maintained until the early 1980s. Export subsidies were provided to each industry on a neutral basis. However, growing export volumes made it hard for the government to bear the fiscal pressure, and export-oriented policies dependent on subsidies became unsustainable. Furthermore, export subsidies were the key target of countervailing duties from developed countries, especially the U.S. As a result, most export subsidy measures having been carried out until the early 1980s were abolished as the mid-1980s approached, and this period marked the transition to export-oriented trade policies facilitating free trade. Also, import regulation measures that the Korean government had put in place to protect infant industries were met with structural issues such as the inefficient protection of domestic industries, and this led to a shift towards liberalisation in the 1980s, mainly through relaxed import control and boosted competition in domestic markets. Korea was incorporated into the global economy by joining GATT in 1967, and set the multilateral GATT/WTO system as a basis for reinforcing policies initiated in the 1980s, related to opening markets, deregulation and trade liberalisation. Recently, however, Korea puts its focus not only multilateral trade policies but FTAs as well. This is partly due to the increasing recognition that FTAs can be a proper policy instrument for upgrading the nation's overall system<sup>3</sup> and pursuing qualitative growth in the Korean economy.

#### **2.1.2 FTA POLICIES**

Korea is one of the most energetic countries seeking FTAs. Eight FTAs, including the Agreement, have already entered into force since 2004 and one or two more FTAs are expected to take effect in 2012. Another eight FTAs

are under negotiation. Moreover, Korea is doing joint studies for eight FTAs. What has led Korea to strive actively after FTAs?

### **RATIONALE FOR KOREA'S FTA DRIVE**

First of all, FTA is in high fashion in a global-wide manner. In particular, as its competitors such as China and Japan are indulged in FTAs to increase their export volume, Korea also has put the top priority on concluding as many FTAs with countries, that China and Japan are having talks with, as early as possible so that it could keep ahead of China and Japan. In this respect, Korea has made every effort to reach as many FTAs as possible in a multiple spontaneous manner, based on the FTA Roadmap of 2003, the first-ever FTA policies. FTA is one of the most effective means for Korea to secure overseas markets since its economy is heavily dependent on goods export and imported energy and resources, which is demonstrated by the dependency ratio of 87.9 percent in 2010 and the WTO DDA negotiations have been in a stalemate for the past 10 years although Korea has been one of the most active members for the successful conclusion of it. Moreover, facing the lack of domestic demand with the prolonged global financial crisis, countries are recognising the importance of boosting export and are rushing into FTA as a strategy for market expansion. In particular, as developed economies in general remain in recession due to the global financial crisis and sovereign debt problems, increasing demand from emerging markets is expected to compensate for decreased demand from developed countries. Particularly, the need for FTA as a way to go in rapidly growing Chinese or Indian markets is increasing. According to the IMF, the share of emerging markets in global trade considerably grew from 33.4 percent in 2005 to 40.5 percent in 2009. However, Northeast Asia is the only region where any regional economic integration or bloc has not been formulated despite its huge potential, considering other blocs' economic integration. In particular, the need for the institutionalisation of economic cooperation through FTA has increased to facilitate market-driven economic integration resulted from interdependence in industrial structure among Korea, China and Japan. In this regard, Korea plays a facilitating role by converging different views of China and Japan. Furthermore, securing resources and energy through FTAs with resource and energy-rich countries is most critical to Korea's sustainable economic growth.

Secondly, Korea has made use of FTAs to improve its economic system in general. Trade agreements concluded in the past generally dealt with market access, including measures on tariff cuts, rules of origin and customs procedure. Since the 1990s, however, trade agreements have not only aimed for wider market access by easing and lifting trade barriers but have also become more comprehensive in their coverage of most of the trade sector, including services, investment, intellectual property rights, competition policies and government procurement. Such comprehensive, high-quality FTAs increase efficiency and competitiveness in industrial structures, and bring about positive ripple effects such as vitalised investment or advanced systems and regulations. These are the goals that Korea hopes to achieve through its FTAs. Therefore, under the recognition that FTAs are a critical policy instrument for boosting industrial and national competitiveness, the Korean government is actively pursuing the conclusion of more FTAs to establish an efficient trade system that will put the nation at the very center of Northeast Asia in the 21<sup>st</sup> century.

Lastly, as more and more FTAs took effect, Korean SMEs' export to Chile, ASEAN countries, India has showed a steady increase, which has improved recognition on FTA by the public and industries, subsequently has contributed to growing demand for FTAs.

### CURRENT STATUS OF KOREA'S FTAs

As shown in Table 1, so far total nine FTAs with 46 economies have been concluded and eight out of them have gone into effect since the effectuation of the Korea-Chile FTA in 2004. Korea has concluded FTAs with its three out of five major trading partners, including ASEAN, the EU and the US. Once deals with China and Japan are reached, Korea will become the first country to complete bilateral FTAs with major economies in the world such as the EU, the US, China, Japan, ASEAN and India. In terms of trading volume in 2011, the share of preferential trade accounted only for 34 percent, which is expected to soar to 66.7 percent through the FTAs with China and Japan. Once both the ongoing FTAs with Australia, Columbia and Canada and the suspended FTAs with Mexico, GCC and New Zealand are all concluded, the share will rise to approximately 80 percent.

Table1: Korea's current status of FTAs (as of the end of May 2012)

Concluded (8 FTAs effectuated of 9 FTAs signed)	Chile (effectuated in April 2004); Singapore (effectuated in March 2006); EFTA (effectuated in September 2006); ASEAN (goods trade: effectuated in June 2007, service trade: effectuated in May 2009, investment: effectuated in September 2009); India (effectuated in January 2010); EU (effectuated in July 2011); Peru (effectuated in August 2011); US (effectuated in March 2012; Turkey (to be effectuated in 2012)
Under negotiation	Canada (begun in July 2005); Mexico (begun in February 2006), GCC (begun in July 2008); Australia (begun in June 2009); New Zealand (begun in June 2009); Columbia (begun in December 2009); Indonesia (begun in March 2012); China (begun in May 2012)
Under examination or joint study	Japan (begun in December 2003, suspended in November 2004; Korea-China-Japan (joint study ended in May 2012); Vietnam (joint study ended in October 2011); MERCOSUR (under joint study); Israel (under joint study); Mongol (under joint study); Central American countries* (under joint study); Malaysia (under joint study)
	*Costa Rica, Panama, Guatemala, Honduras, Dominican Republic, El Salvador

### KOREA-US FTA

The KORUS FTA was the first FTA that Korea has concluded with a large and advanced economy. With the announcement of launching negotiations on February 3, 2006, the original Korea-US FTA was signed on June 30, 2007, after eight rounds of negotiations and two rounds of additional consultations. Through the additional negotiations held upon request by the US, both sides agreed on several issues concerning tariff concessions for autos, pharmaceutical product approval and patent linkage, tariff concessions for pork, and then signed an

additional agreement. Both the original agreement and additional agreement considered as the same with the original one were passed the legislative bodies of the US and Korea on October 12, 2011 and on November 22, 2011, respectively, and entered into effect in March 2012.<sup>4</sup> The KORUS FTA is quite similar with the Agreement in that it is both high- leveled and comprehensive trade deal encompassing various areas including goods, services, government procurement, investment, and intellectual property rights. No significant difference in terms of economic effects is expected between the Agreement and the KORUS FTA.

#### **FUTURE POLICY DIRECTIONS**

First of all, Korea puts focus on making FTA deals with China and Japan to seek economic integration within Northeast Asia. China is by far South Korea's number one trading partner and Japan is the second largest one. Korean companies have heavily invested in both countries. If China continues to grow at the current pace of nearly nine percent, its GDP will biennially increase by the volume of Korea's annual GDP. This huge increase of its GDP will annually create new domestic demand worth more than US\$ 300 billion, presenting a huge opportunity to Korea, a closest neighboring country. Therefore, it is deemed crucial for Korea to make an FTA deal with China to secure sustainable growth and not to lag behind in the global economy. A Korea-China FTA is expected to provide Korea more leverage in addressing diplomatic issues with North Korea. Once the bilateral relationship is further improved between Korea and China by reaching a comprehensive trade deal, it would not be easy for China to support North Korea, at the cost of relationship with South Korea, in a unilateral manner as it has done since the establishment of its government in 1949.

Meanwhile, given closely interlinked industrial structures of Korea and Japan, the need for a bilateral trade pact between the two economies is even greater in the context of facilitating supply chains of companies in both countries.

It could be envisaged to launch a trilateral FTA among Korea, China and Japan, given that the three countries have already completed a joint study where both Korea and Japan were much interested in a market-driven system to a great extent in areas including services, investment, government procurement, rules and regulations while China showed interest in opening agricultural markets of Korea and Japan. In 2010, the size of the three economies combined accounted for 19.6 percent of the global economy, and their exports accounted for 18.6 percent. The share of intra-regional trade volume out of total increased from 12.3 percent in 1990 to 22.5 percent in 2010. The share of intra-regional trade of the total trade among the three Northeast Asian economies has been significant in terms of increase but considerably meager in terms of the absolute figure, compared with that of NAFTA and the EU, 40.5% and 56.3 percent, respectively. Paradoxically, this hints a high potential for trade increase through regional economic integration. It is highly likely a trilateral FTA, compared with any bilateral FTA, could be less ambitious due to its sensitivity. China and Japan do not even consider starting a bilateral joint study for a FTA to date.

At the same time, Korea expects that FTAAP, which aims for trade liberalisation at the pan-Asia Pacific level, will create a numerous opportunities, and is paying keen attention to ongoing discussions by TPP and ASEAN+3/ASEAN+6.

Secondly, equally important is to seek FTAs as a means to secure resources and energy. It is natural for Korea, suffering from lack of resources and energy, to set a priority to make a FTA deal with resource and energy-rich countries such as Russia. In particular, it is quite recommendable for Korea to start negotiations with Russia, given that Russia is Korea's neighboring country with a complementary trade relationship, and that it has just joined the WTO. The benefit of an FTA with Russia, however, would not be confined only to an economic aspect for Korea. An improved relationship between Korea and Russia could be extended to a trilateral relationship among Korea, Russia and North Korea, considering Russia is one of the closest allies of North Korea. Thirdly, it is necessary for Korea to establish customised FTAs with developing countries, given that they would be Korea's major trade partners in the future. It is deemed appropriate to focus more on issues such as development cooperation, and industrial cooperation.<sup>5</sup>

Last but not least, Korean companies need to take full advantage of the FTAs already in effect. To this end, it is necessary to provide more information as well as seminars or programmes to promote private sector's understanding on FTA and build capacity of human resources. What is also required is offering companies more opportunities to present their views to the FTA Implementation Committee in order to address difficulties and grievances they face in taking advantage of FTA. Efforts should also be made to build a database on market entry barriers by constantly identifying private sector's areas of interest.

## **2.2 EU'S TRADE POLICY (COMMON COMMERCIAL POLICY)**

### **2.2.1 OVERVIEW**

Trade policy is an exclusive power of the EU – so only the EU, and not individual member states, can legislate on trade matters and conclude international trade agreements. Trade policy is set down in Article 207 of the Treaty on the Functioning of the European Union (TFEU)<sup>6</sup>. The EU, as a community, has implemented the Common Commercial Policy (CCP) by adopting a unilateral trade policy since January 1970, stipulated in the article 131 of the Treaty on European Union and the Treaty establishing the European Community.<sup>7</sup> The CCP, coupled with the Common Agricultural Policy<sup>8</sup>, was under the purview of the EU since the launch of the EU, built on the Customs Union, and was a natural consequence of the Customs Union.

EU trade policies and the environment in which they are applied have fundamentally changed since the coming into being of the EEC in 1957. In the 1960s and 1970s the CCP was focused on tariffs and other border measures and trade in goods. During this period the EU embraced both multilateral and bilateral liberalisation. The common external tariff of the EU for industrial products has declined from an average of over 15 per cent in the early 1960s to around 3 per cent today. At the same time the EU became notorious for establishing a pyramid of trade preferences with different groups of countries in different tiers of market access. Thus, the level of formal trade protection in the EU is now generally very low. There are, however, some exceptions with high tariffs remaining in particular sectors, primarily agriculture and textiles and clothing. The CCP nowadays is much more diverse. It is no longer just policies affecting trade in goods which are on the agenda. The policy environment affecting trade in services and conditions influencing foreign direct investment have become increasingly important. In addition, as tariffs and quantitative restrictions have declined in importance attention has turned



much more to a whole range of non-border policies, captured under the term of regulatory issues, which affect trade flows. These include technical standards and regulations and rules on intellectual property rights. The EU is addressing these issues at the multilateral level in the WTO, in regional trade agreements and in bilateral agreements on specific regulatory issues, such as the mutual recognition of testing and conformity assessment.<sup>9</sup>

### 2.2.2 EU's NEW TRADE POLICY<sup>10</sup>

#### **BACKGROUND**

In 2005, the renewed Lisbon Strategy set out the steps to take to deliver growth and jobs. It underlined that an open market with high quality internal rules, effectively enforced, in areas such as competition, innovation, education, research and development, employment, social and cohesion policy is essential in helping European companies compete globally. And it highlighted the need to ensure open markets around the world.<sup>11</sup> And lifting the growth potential of the EU's economies is a major challenge taken up by the EU 2020 Strategy for smart, inclusive and sustainable growth.<sup>12</sup> Two communications by the EU on the new trade policy, 'Global Europe: competing in the World – A Contribution to the EU's Growth and Jobs Strategy (Global Europe Strategy)' of 2006 and 'Trade, Growth and World Affairs' of 2010, aimed to give shape to the Lisbon Strategy and the EU 2020 Strategy in the area of trade. EU's trade policy seeks to create jobs, investment opportunities and growth for European companies by increasing their opportunities to trade with the rest of the world. The trade policy helps to open new markets for European exports through trade agreements with other countries which reduce the tariffs and other barriers to the markets of potential trading partners.<sup>13</sup> The trade policy also focuses measures to facilitate market competitions such as deregulation and creating a competitive market through labour market and social policy reforms improve the competitive edge of the European industries and create jobs. In order to cope with the structural shift in the international trade from conventional to hi-tech industry, adding high values to overall industries and fostering specialised industries are strongly required.

Meanwhile, it is long perceived that emerging countries like China, India and Brazil, despite the massive benefits earned through the trade liberalisation by pursuing export-driven growth, maintain their protectionist stance and that in many cases they are passive to comply with international rules, including anti-competition domestic economic policy. Consequently, a desirable solution is to encourage their market opening and to foster an environment where they are required to follow fair trade rules so as to boost exports. The new trade policy also highlights the need for new FTA policy based on practical benefits as well as self-examination of conventional regionalism. Although the EU for a long time has maintained preferential regional trade agreements that accompanies aid with its past colonial countries such as the Cotonou Agreement, most of them are still underdeveloped and the performance of RTAs are far below the expectation of the EU member states.

#### **POLICY TOOLS**

**Trade defense instruments:** These policy tools are used with an aim to regulate unfair prices, anti-competition trade practices or government subsidies, and are mainly related to goods trade. Since early 2007 the EU has

newly introduced several trade defense instruments such as anti-dumping tariffs, subsidies and countervailing measures by accepting opinions of stake holders within the region.

**Market Access Strategy:** Having been in place since 1996, this strategy seeks to remove barriers in goods, services, IPRs and trade sectors through multilateral as well as bilateral trade negotiation. It adopts international rules and regulations including WTO process to address disputes, TBT's pre-notification process, competition rules and ISO rules. The key and innovative part of this strategy is strengthening public-private cooperation. Market Access Advisory Committee, comprised of representatives from the EU member states and businesses, convenes on a regular basis to review trade disputes and select best practices.

#### **MAJOR TRADE AGENDAS**

**Alleviation of Non-Tariff Barriers:** The biggest trade agenda for the EU is non-tariff barriers. Non-tariff barriers highlighted in the new trade policy relate to the actual cases that specifically impede international trades. The EU has long identified the actual impediments to intra-regional trade in pursuing market integration. The EC-1992 Plan is the outcome of such practical approach. Taking this approach, the EU chose to remove distortions by categorising non-tariff barriers by each characteristic. It cites limited practices in government procurement, policy that distorts market competition, excessive request for sanitation inspection and suitability evaluation of goods or customs administration as examples of non-tariff barriers. Regulatory barriers existing in many developing countries related to trade and investment in services, food, cosmetics, pharmaceuticals, constructions materials, electric communication devices, medical equipment and automobile sectors also cause transaction cost increase. Non-tariff barriers for sensitive items such as chemical products, textiles, tires and electric engineering are also high.

**Intellectual Property Rights:** The EU's geographical indications on food and beverage hold great significance in IPR protection policy. It has designated 'priority countries' and promoted, with an aim to protect IPRs, various policies such as technology assistance, improving awareness, political dialogues and partnerships. Entrepreneurs, including representatives from SMEs holding IPRs are involved in intergovernmental consultations and negotiations. With respect to developing countries like China, Russia and Chile, the EU's primary focus is put on providing necessary technology for IPR protection and improving awareness.

**Services:** As its services industry has a globally competitive edge in a wide range of sectors such as finance, professional business, transportation, ITCs, distribution, environment and construction, the EU's expectation is largely on considerably increasing services exports in order to promote growth and create jobs. The EU views that the opening of the services market will contribute to the economic development by improving productivity of developing countries where services sector accounts for around 50 percent of their GDP.

**Investment:** There are no strategies for the investment sector newly adopted in the new trade policy. The EU is focusing its efforts on improving internal and external conditions to attract foreign-invested companies in line with the globalization of production.

**Government Procurement:** Additional opening of the government procurement market is one of the agendas the EU is strongly pushing for. The EU is of view that major economies , much less developing countries, do not open their domestic procurement market to an appropriate level, and that there are many cases of not only de jure but also de facto limited and discriminatory treatment against EU companies.

**Competition Policy:** The EU implements a common competition policy at a whole EU level to regulate competition-restrictive transaction practices that undermines the purpose and functions of common market. This is helpful for the EU in playing a leading role in the competition policy sector. The issue raised by the EU is that preferential government support for companies or anti-competition practices in developing countries, which is incompatible with the WTO-related agreements/treaties, constraint the business activities of EU companies. In particular, as will be followed below, one of the key agendas in the EU's new FTA policies is policy cooperation or coordination in the competition policy sector.

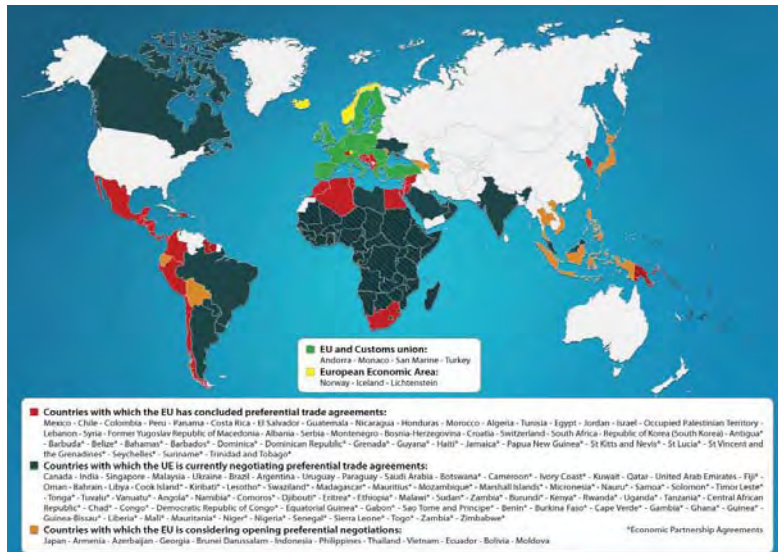
### *2.2.3 EU's NEW FTA POLICIES*

The EU, according to the "Global Europe Initiative" adopted in 2006 (hereinafter "the Initiative 2006"), seeks to set out how, in a rapidly changing global economy, the EU can build a more comprehensive , integrated and forward-looking external trade policy that makes a stronger contribution to Europe's competitiveness, under the sense of crisis that changing global economic environment, while it can create unprecedented opportunities for growth and development, can also put new pressures on natural resources and on traditional industries and livelihoods, and has eroded old certainties and aroused new fears.<sup>14</sup> The FTAs should be comprehensive in scope, promote liberalisation of substantially all trade and be compatible with bilateral relations and the WTO, which means fulfilling the requirements stated in Article XXIV of the GATT and Article V of the GATS. The new FTA policy as well, in the same context with the new trade policy, focuses on applying to the upper-mentioned major trade agendas to the countries that can bring substantial economic and trade benefits to the EU in terms of market size and growth potential to boost exports and investment of the member states. In a passive sense, it stresses the expected opportunity cost of not signing an FTA with these economies. In particular, if the US or Japan concludes an FTA with them; the European economy will be affected by possible trade diversion. In this respect, the new FTA policy also seeks to prevent these countries in advance from taking a protectionist stance against the EU. The FTA signed with Mexico is the case in point. Meanwhile, the EU selects its FTA partners by taking into account the accessibility to the source of supply of primary commodities such as energy, leather and metal. In both aspects, Korea, ASEAN, India, MERCOSUR, GCC, China and Russia met the EU's criteria for signing an FTA. FTA has WTO-plus elements which narrow down the scope of agendas that cannot be addressed through multilateral WTO negotiations and help parties seek solutions. Based on this fact, the EU suggests a comprehensive range of options on areas of preferential treatment (non-tariff barriers, IPRs, services, investment,

government procurement, competition policy, MRA, etc.) depending on partner country's economic development and openness. It also suggests including labour standards and environmental protection to free trade agreements for the cause of 'sustainable development' as the US does in concluding FTAs.

**Current Status of EU's FTA:** The EU used to focus on multilateralism and trades with the Mediterranean countries and former colonies within and around the region. But it has actively engaged in bilateral negotiations through FTAs since the deadlock in the WTO DDA negotiations. As shown in Figure 1, by promoting FTAs with individual ASEAN economies, preliminary consultation with Japan and Canada, concluding the negotiations with Latin American countries such as Peru and Columbia, the EU is expanding its influence towards Asia and North and Latin America. As intra-regional trade takes up a large share in the EU trade, trades with FTA partners accounting for more than 70% in total, and has reached 74.5% with the effectuation of FTAs with Serbia and Korea.

Figure 1: Current status of EU's FTA<sup>15</sup>



### 3. KOREA-EU FTA

#### 3.1 OVERVIEW

The negotiations of the Agreement were officially launched with the announcement by trade ministers of both Parties on May 6, 2007. After eight rounds of negotiations, the initialing of the pact was carried out between the both Parties on July 13, 2009, followed by the official signing of the deal by trade ministers on the occasion of the Korea-EU summit meeting on October 6, 2010. It was provisionally effectuated on July 1, 2011 upon the ratification by the National Assembly of Korea in May 4, 2011.

The Agreement is of great significance in that it embodies the spirit of the renewed trade policies of both Parties. It aims to establish a free trade area for goods, services, establishment as well as the corresponding associated rules. Basically, the main objective is to liberalise and facilitate trade in goods and services, in conformity with

Article XXIV of the GATT and Article V of the GATS respectively.<sup>16</sup> The Agreement is the most ambitious trade agreement ever negotiated by the EU in that it is unprecedented both in its scope and speed at which trade barriers are to be removed.

By the end of the transitional periods, virtually all import duties between the two economies will have been removed. Exporters and importers of all industrial products and almost all agricultural products can trade without duties. Additionally, the FTA breaks new ground in tackling significant non-tariff barriers to trade, with a specific focus on the automotive, pharmaceuticals, medical devices and electronics sectors. The Agreement also creates new opportunities for market access in services and investments, and lead to major advances in areas such as intellectual property, government procurement and competition policy. The Agreement is also the EU's first trade deal with an Asian country. The Agreement is expected not only to boost bilateral trade and economic growth in both Korea and the EU, and is heralded as an agreement that generates mutual economic benefits and offer enormous business opportunities both to Korea and the EU. The Agreement also has a wider impact in Asia and elsewhere by signalling the EU's openness to doing business with third countries and its commitment to free trade.<sup>17</sup>

### **3.2 MAJOR CONTENTS OF THE AGREEMENT<sup>18</sup>**

#### *3.2.1 TARIFF ELIMINATION FOR INDUSTRIAL AND AGRICULTURAL GOODS*

The schedule for the elimination of tariff is extended over a maximum of 20 years commencing from the time the agreement takes effect. Overall, customs duties for almost 80 percent of total imports from Korea are supposed to be abolished by the EU once the Agreement enters into force. Korea eliminates its tariffs for some two thirds of its imports originating from the EU immediately after the effectuation of the Agreement as well. Moreover, the Agreement is expected to eliminate almost all tariffs on industrial goods within five years. By year 7, both sides are expected to have achieved 98 percent duty elimination in terms of tariff lines. A limited number of highly sensitive agricultural and fisheries products are provided a grace period longer than 7 years. A few agricultural products including rice are excluded from the Agreement. Table 3 and Table 4 show tariff schedules of both sides.

On the Korean side, almost all imports from the EU are covered by tariff elimination. More specifically, Korea is supposed to eliminate customs duties on 90.7 percent of industrial products from the EU upon the entry into force of the Agreement, 95.8 percent within three years, and ultimately tariffs on all industrial products is destined to be removed with seven years. The eight percent tariff on cars produced by EU car manufacturer and exported to Korea will be eliminated. For agricultural products, almost all imports are supposed to be liberalised finally by the Agreement, compared to only two percent before the implementation of the Agreement. The full elimination of customs duties will take up to 20 years for some fruit (apple, pears) with safeguard clauses; up to 18 years for some oil seeds and oleagineous, green tea, sesame oil; up to 15 years for some vegetables, meat, products of animal origin or the milling industry, preparation of vegetables, beverages; up to 10 years for some dairy products, live trees and other plants, cereals and sugar. Besides, some agricultural products such as rice and rice products are excluded from the Agreement, whereas tariffs rates on specific products such as some fish

products, pepper, barley, soya beans, onion, Korean citrus fruit, garlic, etc. are expected to remain unchanged. Finally, some fish products, grapes, dairy products, honey, oranges, malt, etc. are in distinct concession by granting special schedule or special treatment like tariff rate quotas.

Table 1.4: Korea-EU trade in goods and services: breakdown by category

	EU exports to Korea		Korean exports to the EU	
	mn USD	%	mn USD	%
<b>GOODS:</b>	<b>24 903</b>	<b>75,5%</b>	<b>43 312</b>	<b>92,4%</b>
<b>1. Animal, of which:</b>				
Meat: cattle.sheep.goats.horse	15	0,0%	0	0,0%
Meat products nec	346	1,0%	1	0,0%
Animal products nec	58	0,2%	0	0,0%
<b>2. Dairy products, of which:</b>				
Raw milk	1	0,0%	0	0,0%
Dairy products	120	0,4%	0	0,0%
<b>3. Oth Agr. Prod, of which:</b>				
Paddy rice	0	0,0%	0	0,0%
Wheat	0	0,0%	0	0,0%
Cereal grains nec	0	0,0%	0	0,0%
Vegetalbes. fruit. nuts	5	0,0%	2	0,0%
Oil seeds	0	0,0%	0	0,0%
Sugar cane. sugar beet	0	0,0%	0	0,0%
Plant-based fibers	8	0,0%	0	0,0%
Crops nec	56	0,2%	18	0,0%
Cattle.sheep.goats.horses	5	0,0%	0	0,0%
Wool.silk-worm cocoons	1	0,0%	0	0,0%
Forestry	6	0,0%	0	0,0%
Fishing	4	0,0%	3	0,0%
Vegetable oils and fats	80	0,2%	0	0,0%
Processed rice	0	0,0%	1	0,0%
Sugar	4	0,0%	0	0,0%
<b>4. Other food products</b>	<b>737</b>	<b>2,2%</b>	<b>140</b>	<b>0,3%</b>
<b>5. Beverages and tobacco</b>	<b>387</b>	<b>1,2%</b>	<b>8</b>	<b>0,0%</b>
<b>6. Primary, of which:</b>				
Coal	1	0,0%	0	0,0%
Oil	3	0,0%	0	0,0%
Gas	3	0,0%	0	0,0%
Mineral nec	42	0,1%	3	0,0%
<b>7. Metals, of which:</b>				
Ferrous metals	825	2,5%	539	1,1%
Metals nec	730	2,2%	141	0,3%
Metal products	536	1,6%	657	1,4%
<b>8. Chemicals, rubber, plastics</b>	<b>4 150</b>	<b>12,6%</b>	<b>2 729</b>	<b>5,8%</b>
<b>9. Textile</b>	<b>597</b>	<b>1,8%</b>	<b>1 791</b>	<b>3,8%</b>
<b>10. Leather, clothing, of which:</b>				
Wearing apparel	387	1,2%	394	0,8%
Leather products	439	1,3%	170	0,4%
<b>11. Other Man. Products, of which:</b>				
Wood products	300	0,9%	41	0,1%
Paper products. publishing	402	1,2%	118	0,3%
Petroleum. coal products	131	0,4%	43	0,1%
Mineral products nec	535	1,6%	198	0,4%
Manufactures nec	303	0,9%	491	1,0%

12. Machinery	8 613	26,1%	7 119	15,2%
13. Cars Trucks	2 031	6,2%	8 213	17,5%
14. Transport equipment	721	2,2%	3 550	7,6%
15. Electronic equipment	2 319	7,0%	16 939	36,1%
<b>SERVICES:</b>	<b>8 084</b>	<b>24,5%</b>	<b>3 582</b>	<b>7,6%</b>
16. Trade	778	2,4%	383	0,8%
17. Sea transport	1 991	6,0%	359	0,8%
18. Air transport	1 476	4,5%	608	1,3%
19. Other transports	437	1,3%	169	0,4%
20. Communication	143	0,4%	89	0,2%
21. Finance	180	0,5%	373	0,8%
22. insurance	174	0,5%	34	0,1%
23. Business services	2 252	6,8%	1 358	2,9%
24. Tourism	412	1,2%	102	0,2%
25. Public services	209	0,6%	77	0,2%
26. Other services, of which:				
Electricity	0	0,0%	0	0,0%
Gas manufacture. Distribution	4	0,0%	0	0,0%
Water	5	0,0%	1	0,0%
Construction	23	0,1%	30	0,1%
<b>TOTAL</b>	<b>32 987</b>	<b>100,0%</b>	<b>46 894</b>	<b>100,0%</b>

Source: own calculations from GTAP 6 (base year 2004); Note: the shaded figures correspond to the most significant flows.

Table 3: Korean tariff schedule for the main import products originating from the EU

Import rank	Designation	Base rate	Staging category
1	Air-coolers, Air Purifiers of Other Machines and M	5,7%	7
2	Electronic integrated circuits	0,0%	0
3	Medicaments	7,8%	3
4	Motor car (Cylinder<3000 cm <sup>3</sup> )	8,0%	5
5	Motor car (1500<cylinder<3000 cm3)	8,0%	3
6	Ferrous waste and scrap	0,0%	0
7	Part of combustion piston engines	7,6%	3
8	Pork (Meat)	27,4%	10
9	Parts and accessories of the motor vehicles	8,0%	0
10	Valves, taps, cocks and traps	8,0%	7
11	Other chemical products	6,5%	3
12	Turbo-compressors	8,0%	3
13	Aeroplanes	0,0%	0
14	Whisky	20,0%	5
15	Uranium enriched	0,0%	0
16	Gear boxes and parts thereof	8,0%	0
17	Switch boards	8,0%	0
18	Measuring or checking instruments	7,3%	0
19	Internal combustion engines	5,9%	3

20	Cobalt oxides	5,5%	0
21	Semi-finished products of iron or steel	0,0%	0
22	Parts of compressors	8,0%	0
23	Beauty or make-up preparations	8,0%	5
24	Electric integrated circuits	0,0%	0
25	Pumps for piston engines	8,0%	5

Source: own computation from European Commission (2009a)

On the EU side, the majority of products are fully liberalised once the agreement enters into force. Agriculture and food products are the major sectors which are partly exempt from the elimination of customs duties. For instance, bovine meat is expected to be duty-free after five years. Some seafood products are liberalised after three or five years depending on the product considered. The other products such as milk, honey, some fruit and vegetables, prepared fish and crustaceans, sugar, some prepared cereals and tobacco fall into category to be liberalised after three to five years. Some particular products such as clementines, grapes and some other fruits are liberalised after 10 years (up to 17 years), while tariff on the most sensitive products such as fresh tomatoes, oranges and rice are not abolished. With respect to manufactured products, most duties are expected to be removed immediately after the agreement enters into force, except pneumatic tires, some leather, wood and wool products (up to five years), car trucks and small aeroplanes (up to 5 years) as well as some electrical machinery equipment (monitors and projectors). It can be observed that the highest base rates concern monitors and projectors (12.3 percent), motor cars (10 percent) as well as pneumatics (4.5 percent). For these products, tariff removal is expected within 5 years at the latest. The other key products, essentially mechanical and electrical machinery as well as ships, face zero or very low tariffs which are expected to be removed at the time the agreement enters into force.

Table 4: EU tariff schedule for the main import products originating from Korea

Import rank	Designation	Base rate	Staging category
1	Television, sound recording, camera	0,0%	0
2	Parts suitable for television, radio, radars...	2,3%	0
3	Other vehicles (1500<cylinder<2500 cm3)	10,0%	3
4	Other vessels	1,1%	0
5	Tankers	0,9%	0
6	Monitors and projectors	12,3%	5
7	Electronic integrated circuits	0,0%	0
8	Motor car (1500<cylinder<3000 cm3)	10,0%	3
9	Part of data processing machines	0,0%	0
10	Motor car (1000<cylinder<1500cm3)	10,0%	5
11	Other devices, appliances and instruments	1,6%	0
12	Machinery with 360 degrees Revolving	0,0%	0
13	Data processing machines (other)	0,0%	0
14	Pneumatics used on motor cars	4,5%	3



15	Electronic integrated circuits	0,0%	0
16	Other vehicles (cylinder>2500 cm <sup>3</sup> )	10,0%	3
17	Parts and accessories of the motor vehicles	3,5%	0
18	Motor car (cylinder<1000cm <sup>3</sup> )	10,0%	5
19	Data processing machines (other)	0,0%	0
20	Discs, tapes, solid-state non-volatile storage device	3,5%	0

Source: own computation from European Commission (2009a)

How is it possible to benefit from the tariff elimination? It is in the nature of an FTA that only products originating in one of the parties can benefit from the preferences granted under the Agreement: rules of origin are an important aspect. The relevant provisions for trade between Korea and the EU are stipulated in the chapter on Rules of Origin. The following conditions have to be met for goods exported from the EU to benefit from preferential treatment at the Korean border.

Goods must:

- 'originate' in the EU;
- fulfil certain additional requirements;
- be accompanied by an 'origin declaration'.<sup>19</sup>

### 3.2.2 TACKLING NON-TARIFF BARRIERS (NTBs)

As a WTO-plus element, the Agreement has set independent disciplines on non-tariff barriers (NTBs) with regard to automobiles, consumer electronics, pharmaceutical products and medical devices, and chemicals. The Agreement is the first FTA, Korea has concluded, introducing disciplines on NTBs, and addressing a considerable number of outstanding issues previously raised by EU companies in this respect. Concerning consumer electronics, widespread use of international standards and flexible approval procedures are key elements for the electronics industry in making best use of global supply chains, economies of scale, and fast-paced innovation. Korea and the EU apply generally similar requirements, largely based on international standards, and the Agreement stresses the need for international standardization and simplification of certification as a means of reducing trade costs. NTBs on automobiles are also expected to be abolished, notably because the FTA provides for a wide-ranging recognition of international standards by Korea. With regard to pharmaceutical products and medical devices, the Agreement addresses the need to strengthen the transparency in pricing decision. Finally, a bilateral cooperation intending to ensure more transparency in the laws, the regulations and their implementation for chemicals has been introduced in the Agreement.

Furthermore, the Agreement introduces a specific chapter to tackle the problem of technical barriers to trade (TBTs), as a means of reinforcing the cooperation on standards and regulatory issues to secure transparency in making rules, the use of international standards, etc.. In particular, the Agreement includes comprehensive provisions to address issues which have been identified by EU automobile manufacturers as major obstacles in their operation in Korea. The Agreement eliminates the need to produce specific cars for the Korean market or conduct expensive tests in Korea to show compliance with a wide range of safety standards. For core safety standards, Korea accepts the UNECE regulations in the application of domestic standards for 32

out of 42 items by recognizing six more UNECE standards. Equivalence with European standards on OBDs also represents a major cost saving, since Korean standards for gasoline cars are based on US Californian standards. Finally, special accelerated dispute settlement ensures compliance with the rules negotiated for the sector. Monitoring the implementation of commitments is also undertaken through a working group on motor vehicles and parts, which will meet at least once a year.

In the same context, a chapter on Sanitary and Phyto-sanitary (SPS) measures is included in the FTA as a means of facilitating trade in animals and animal products, plants and plant products while maintaining a high level of human, animal and plant health. Finally, trade facilitation provisions such as customs cooperation and simplification of border procedures are incorporated into the Agreement. For that purpose, a customs committee has been in place.

### *3.2.3 TRADE IN SERVICES*

The Agreement has significantly upgraded Korea's WTO commitments. The level of liberalisation in the Korean side with respect to services in the Agreement is regarded as the highest of all, compared to the previous FTAs which Korea has concluded to date. The scope of the FTA includes diverse services sectors: telecommunications, environmental, transport, construction, financial, postal and express delivery, professional services such as legal, accounting, engineering and architectural services, and a large variety of other business services.

Table 5 and Table 6 elaborate liberalisation of trade in services of both sides. More specifically, Korea has made commitments in additional 11 sectors such as waste water services and satellite broadcast transmission services, apart from 104 sectors out of all the WTO155 sectors which Korea had already offered its commitments. For telecommunications, removal of foreign ownership requirements in Korea, direct operation of EU satellite broadcasters into Korea, etc. are set out in the Agreement. The Agreement also stipulates environmental services (cooperation on non-industrial waste waters) shipping (full market access and non discriminatory treatment in the use of port services and infrastructure in Korea), financial services (improvement of market access), express delivery services, air transport services (improved market access for EU services into Korea, etc). Korea allows European law firms to open offices in Korea to advise foreign investors or Korean customers on non-Korean law. The services which fall into full liberalisation or few restrictions includes some business services, such as computer and related services, R&D (except restriction for services in natural sciences), telecommunication (equipment rental, etc...), advertising, market research and consulting, packaging, printing and convention services, as well as – for Korea only – technical testing and translation services. Communication services also show a high liberalisation level (postal and telecom services), as well as construction services and environmental services (except mode 3).

On the other hand, some service sectors still remain more protected despite some improvement in market access. These are: some professional services (legal accounting, auditing services), distribution services, education, health and social services, tourism and travel, recreational, cultural and sporting activities as well as transport (except a favorable market access for the EU concerning shipping and aircraft services into Korea) and

energy services<sup>20</sup>. Financial services also remain protected despite some liberalisation for specific activities. For Mode 1, these activities concern insurance services for maritime shipping and goods in international transit as well as specific banking services, such as transfer of financial information and data processing. With regard to Mode 3, there is a medium level of liberalisation of insurance services, with still some restrictions in terms of authorisation, registration, etc.. Banking services remain protected in Korea, especially with regard to credit unions, mutual saving banks, specialized capital finance companies, etc. despite an improvement in market access for the other banking services. Into the EU, banking establishment is also restricted to a certain extent in a large number of Member States.

The other provisions of the agreement cover free capital movement (Chapter 8), Government procurement (chapter 9), intellectual property (Chapter 10), competition and transparency (chapters 11 and 12), dispute settlement (chapter 14) as well as specific provisions concerning sustainable development (chapter 13). In addition, specific protocols cover the problems of rules of origin, especially in the car sector, mutual administrative assistance in customs matters as well as cultural cooperation.

Table 5: Restrictions applying into the EU for Korean services

	Mode 1	Mode 2	Mode 3	Remarks
Agriculture, Forestry			***	
Fishing and aquaculture			***	
Mining and Quarrying			***	
Manufacturing			n	(0)
Production, transmission and distribution of energy			***	
Business services, of which:				
Professional services, of which:				
Legal services	***	***	**	(1)
Accounting services	**	n	*	
Auditing services	***	n	***	
Architectural services	**	n	*	
engineering services	**	n	***	
medical services including retail sales	***	n	***	
Veterinary	***	n	**	
Computer and related services	n	n	n	
R and D services	*	n	n	
Real Estate services	***	n	*	
Rental/Leasing services, of which:				
Ships	**	n	***	
Aircraft	**	***	***	
Other transport equipment	**	n	n	
Other machinery and equipment	**	n	n	
personal and household goods	***	***	*	
Telecom equipment rental	n	n	n	
Other Business services, of which:				
Advertising	n	n	n	
market research	n	n	n	
management consulting	n	n	n	
technical testing	**	**	n	
Consulting	*	n	n	
placement and supply services of personnel	***	***	***	
maintenance and repair	***	***	*	

investigation and security	***	***	***	
building cleaning services	***	n	n	
photographic services	*	n	n	
packaging services	n	n	n	
printing and publishing	n	n	**	
convention services	n	n	n	
translation services	*	n	**	
telecom consulting	n	n	n	
Communication services, of which:				
Postal and courier services	n	n	n	n
Telecom services, of which:				
transmission and reception of signals	n	n	n	
satellite broadcast transmission services	*	*	*	(3)
Construction services	n	n	n	
Distribution services, of which:				(4)
Commission agents' services	**	*	n	
Wholesale trade services	***	***	**	
Retail service	***	***	***	
Franchising	n	n	n	
Educational services, of which:				(5)
Primary education	**	**	***	
Secondary education	**	**	**	
Higher education services	**	**	**	
Adult education services	**	*	***	
Other education services	***	***	**	
Environmental services, of which:	***	n	n	
Financial services, of which:				
Insurance	***	***	**	(8)
Banking and other financial services	***	*	**	
Health and social services, of which:	***	*	***	(5)
Tourism and travel	***	n	*	
Recreational, cultural and sporting services	***	***	***	(6)
Transport services, of which:				
Maritime transport	n	n	***	
Internal Waterways transport	**	**	***	
rail transport	***	n	***	
Road transport	***	n	***	
Pipeline transport	***	***	*	(7)
Services auxiliary to transport, of which:				
Maritime transport	***	n	***	(9)
Internal Waterways transport	***	n	***	(9)
rail transport	**	n	**	
road transport	***	n	**	
Pipeline transport	***	n	n	
Energy services	***	n	***	

Source: own calculations from Annex 7-A-2 and 7-A-3 of the agreement

Remarks:

n: no restriction; \*: limited restrictions; \*\*: medium restriction level, \*\*\*: high restriction level

(0) except manufacture of refined petroleum products

(1) excluding legal advisory and legal documentations and certification services provided by legal professionals entrusted with public functions, such as notaries, "huissiers de justice" and other "officiers publics et ministeriels"

- (2) with some restrictions for handling and express delivery services
- (3) excluding the selling of television programme package as well as domestic links
- (4) excepting arms and munitions
- (5) excluding public-funded services
- (6) excluding audio-visual services
- (7) other than fuel
- (8) for mode 1, no restriction for consulting services
- (9) except national cabotage transports

Table 6: Restrictions applying into Korea for EU services

	Mode 1	Mode 2	Mode 3	Remarks
Agriculture, Forestry				(1)
Fishing and aquaculture			***	
Mining and Quarrying			**	
Manufacturing			n	
Production, transmission and distribution of energy			**	
Business services, of which:				
Professional services, of which:				
Legal services	**	**	**	
Accounting services	**	**	**	
Auditing services	**	**	**	
Architectural services	n	n	n	
engineering services	n	n	n	
Veterinary	n	n	n	
Computer and related services	n	n	n	
R and D services	n	n	*	
Real Estate services	n	n	n	
Rental/Leasing services, of which:				
Ships	n	n	**	
Aircraft	n	n	**	
Other transport equipment	n	n	n	
Other machinery and equipment	n	n	n	
personal and household goods	n	n	n	
Telecom equipment rental	n	n	n	
Other Business services, of which:				
Advertising	n	n	n	
market research	n	n	n	
management consulting	n	n	n	
technical testing	n	n	n	
Consulting	n	n	n	
placement and supply services of personnel	n	n	***	
maintenance and repair	***	**	n	
investigation and security	***	n	***	
building cleaning services	***	n	n	
photographic services	***	***	n	
packaging services	n	n	n	
printing and publishing	n	n	n	
convention services	n	n	n	
translation services	n	n	n	
telecom consulting				
Communication services, of which:				

Postal and courier services	h (1)	n	**	
Telecom services, of which:	*	n	*	
Construction services	***	n	n	
Distribution services, of which:				
Commission agents' services	***	n	n	
Wholesale trade services	***	n	*	
Retail service	***	n	*	
Franchising	n	n	n	
Educational services, of which:				(2)
Primary education	***	***	***	
Secondary education	***	***	***	
Higher education services	***	n	***	
Adult education services	**	n	**	
Other education services	***	n	***	
Environmental services, of which:	**	n	n	
Financial services, of which:				
Insurance	**	**	**	
Banking and other financial services	**	**	***	
Health and social services, of which:	***	***	***	
Tourism and travel	** (3)	n	n	
Recreational, cultural and sporting services, of which:	***	n	**	
Transport services, of which:				
Maritime transport	*	n	*	(4)
Internal Waterways transport	***	n	***	
rail transport	***	n	**	
Road transport	n	n	n	
Pipeline transport	***	***	n	
Services auxiliary to transport, of which:	***	n	n	(5)
Energy services	**	**	**	

Source: own calculations from Annex 7-A-4 of the agreement

Remarks:

n: no restriction; \*: limited restrictions; \*\*: medium restriction level, \*\*\*: high restriction level

(1) except nuclear energy

(2) excluding public-funded services

(3) free access except Hotel restaurants

(4) excluding cabotage

(5) excluding services for agriculture, fishery, and livestock products

### 3.2.4 INTELLECTUAL PROPERTY RIGHTS

Building on the TRIPS Agreement of the WTO, the Agreement provides a legal framework to basic rules in both Parties for the protection of intellectual property rights and enforcement of such protection. Mechanisms for exchange and cooperation are also set up in the Agreement. It sets standards of protection for intellectual property rights such as the protection of authors' work for duration of 70 years after the death of the author and the right to a single equitable remuneration for performers and producers of phonograms. The Agreement ensures that procedures for registering trademarks in both Parties follow certain rules, such as the possibility of opposition by interested parties and the availability of a public electronic database of applications and registrations. It details the rights conferred on registered and unregistered designs. The Agreement guarantees

the protection of data submitted to obtain marketing authorisation for pharmaceutical and for plant protection products, and provides protection for a number of Korean and European geographical indications (GIs).

Moreover, the Agreement furnishes both Parties with enforcement measures to be applied to ensure effective action against infringement of the protection granted to intellectual property rights. This includes minimum rules on civil and administrative proceedings, and criminal procedures and penalties in certain cases. The Agreement provides that online service providers are not liable, under certain conditions, where services of intermediaries are used by third parties for infringing activities. The Agreement also foresees that measures can be taken at the border, upon request or by the authorities, where it is suspected that goods infringing an intellectual property right may be imported, exported or placed under other customs procedures mentioned in the Agreement. Both Parties will hold regular dialogue on intellectual property, during which implementation of the Agreement will be monitored and any other relevant issue may be addressed.

### *3.2.5 GOVERNMENT PROCUREMENT*

Korea and the EU already had substantive mutual commitments on government procurement in the framework of the WTO Agreement on Government Procurement (GPA). In the framework, both Parties agreed to apply substantial transparent and non-discriminatory procedural rules to conducting certain tenders for goods and services (including construction services) by central and (certain) sub-central entities. The Agreement expands these mutual commitments to an additional area, not covered in the GPA, which has significant business opportunities in both regions: in EU public works concessions and in Korean 'build-operate-transfer' (BOT) contracts. Such contracts, for example key infrastructure projects such as the construction of highways, are of significant commercial interest to European suppliers, who are recognised as global leaders in this area. Guaranteeing the practical and legal accessibility of such tenders to European suppliers will secure substantial new opportunities.

## **3.3 ECONOMIC IMPACT OF THE AGREEMENT<sup>21</sup>**

The effects of the Agreement on GDP growth are positive for both the EU (0.08 percent) and Korea (up to 0.84 percent). Welfare gains are also positive and significant for Korea (up to 1.12 percent). These gains are mainly due to terms of trade improvement, capital accumulation through increased investment as well as variety gains, for instance increase in the number of varieties available to the consumer due to the FTA. On the other hand, the EU welfare gain is smaller (+0.02 percent). The higher welfare gains expected for Korea are essentially due to its initial higher level of protection as well as to its smaller economic size relative to the EU. Both Parties show positive and significant effects on bilateral exports and imports. In fact, the increase in Korean bilateral exports to the EU amounts to up to 38.4 percent, whereas EU bilateral exports to Korea increase even more (up to 82.6 percent), as a result of the initial high protection in Korea.

With regard to effects on aggregate bilateral trade in value, the increase in EU exports to Korea amounts to a minimum of EUR 33 billion and a maximum of EUR 41 billion depending on the baseline considered. In addition,

EU imports from Korea increase by up to EUR 34 billion. This makes it possible to improve the EU trade balance with regard to Korea by up to EUR 10.1 billion. Sectoral bilateral trade effects are generally significant<sup>22</sup>:

- The most important export increase from the EU to Korea concerns cars and trucks (about 400 percent, i.e. EUR 8 billion).
- Similarly, a significant increase in EU meat and dairy product exports and more generally other agricultural and food products is also due to the liberalisation of the Korean market in the FTA.
- The EU is also in a position to significantly increase its exports of other industrial products (up to 84 percent). In particular, machinery and electronic equipment exports, which currently account for one-third of EU's overall exports to Korea, are expected to grow by more than 65 percent in the most favorable scenario. As a result of this export increase, intra-industry trade may also develop, since EU producers will enjoy a better market access in Korea, especially in consumer electronics.
- Korea also increases its bilateral exports of manufactured products, especially textiles, leather/clothing as well as cars, other transport equipment, chemicals and other manufactured products. For these latter products, an increase in intra-industry trade is also expected. However, Korean exports of services to the EU are expected to decline slightly.
- The analysis of sectoral bilateral trade in value provides the following results: EU exports to Korea significantly exceed imports regarding chemicals, machinery and other manufactured products. This leads to an improvement of the EU bilateral trade balance by about EUR 15 billion for these industries taken together. The other sectors with positive effects on the EU bilateral trade balance include agriculture and food products (meat, dairy and other food product for about EUR 5 billion) as well as services (up to EUR 2 billion). On the other hand, the rise in EU bilateral imports of cars exceeds that of exports. Consequently, the EU trade balance regarding the car industry deteriorates by EUR 5 billion (up to EUR 13 billion depending on the baseline considered). Other EU trade balance deterioration concerns textiles (EUR 3 billion). It should be noted that the increase of Korean exports of textiles and cars may be overestimated since the model cannot take in account of the impact of rules of origins or the recent increase of the Korean car production in Europe or in third countries for exports to the EU.

The Agreement generally has small production effects in the EU. Small positive effects may be found in some animal and food products (meat, dairy products, beverage and tobacco and other food products), chemicals, machinery as well as other manufactured products. Transport services (sea and air transports) also exhibit a small production expansion. Conversely, any decrease in production can occur in textiles, leather and clothing as well as cars and other transport equipment. However, it is worth mentioning that this reduction is calculated, compared to the baseline. Consequently, given the EU's growth trends, production may not decrease in absolute terms, compared to today. The same reasoning is valid for other variables, such as employment. Korea shows to some extent a reverse picture, although the magnitude of the production effects is more significant. In this regard, significant increases can be observed for textiles, cars/trucks, leather/clothing as well as other transport equipment to a lesser extent. Conversely, negative production effects are recorded for dairy products and meat as well as metals, machinery, electronic equipment, other manufactured products and transport services to a



lesser extent. Finally, the study shows very small employment effects for the EU. With regard to Korea, sectoral employment effects are more significant, with positive effects for textiles, leather/clothing as well as for cars. Finally, the consideration of trade facilitation slightly increases the trade growth due to the implementation of the Agreement.

### **3.4 OTHER BENEFITS AND OPPORTUNITIES**

The Agreement carries great significance for both sides. Firstly, the Agreement will considerably expand trade and investment not only between both Parties but between the EU and Northeast Asia as a whole as well. From the EU's perspective, the Agreement is the first of the so-called "new generation" FTAs pursued under the Global Europe Strategy of the EU adopted in 2006. This Agreement fulfills the mandates of the Initiative by guaranteeing access to Korea's dynamic market in which European businesses can compete on equal standings against local and other foreign businesses. As the first FTA the EU has concluded with an Asian partner, the Agreement is expected to support the EU in securing a foothold in this part of the world and serve as EU's springboard to the rapidly growing Asian market. In particular, once Korea successfully brings its FTA with the US into effect and signs agreements also with China and Japan, the EU will be able to substantially expand its overseas markets through the Agreement. Secondly, the Agreement will connect Korea and the 27 EU member states, including advanced as well as emerging markets, thereby promoting economic cooperation at a various level. Last but not least, the Agreement is another win-win solution for both Parties. Korea's overall economic system will be improved as the pact will upgrade Korea's institutions and practices to the EU level, thereby enhancing Korean economy's transparency and predictability. As for the EU, the deal is in accord with its new trade policy direction aiming to promote internal economic growth and job creation.

## **4. DIRECTIONS OF COOPERATION FOR CO-PROSPERITY**

### **4.1 IMPLEMENTATION OF THE AGREEMENT**

The agreement is designed to facilitate trade, investment and economic cooperation between Korea and the EU. However, since the FTA itself does not automatically guarantee increase in economic exchanges, to faithfully fulfill the Agreement, the Trade Committee of the Agreement needs to play a pivotal role for seamless implementation of the Agreement by consistently monitoring the implementation and providing solutions to the companies facing problems. Equally vital is for the implementation to be carried out transparently by both Parties. To institutionalise dialogues between both sides should be prioritized as well. The Trade Committee and other lower level consultation groups should be run as defined in the Transparency Chapter of the Agreement. Sectoral committees and working level meetings are needed to be held at least once a year to consistently assess whether the FTA is implemented as agreed. The problems insurmountable in those working-level meetings should be resolved by the Trade Committee.

In the wake of the Agreement, it became necessary for both Korean and EU companies to work together in entering the emerging markets such as China through joint investment. It is necessary for the EU to make

efforts to form strategic alliance with Korean companies to occupy large emerging markets in advance. Particularly, the EU will be able to enter the Chinese market effectively through Korea if the Korea-China FTA is concluded.

Meanwhile, besides official channels or dialogues, Korea and the EU could come up with various opportunities, such as programmes for exchange of private sector personals, academic gatherings (workshops or seminars), and caravans for companies etc. to help understand each other better.

#### **4.2 MAJOR AREAS FOR SOCIO-ECONOMIC COOPERATION**

It is observed that the demand for welfare is rapidly growing in Korea although the term 'welfare' is comparatively new and strange to Korean people. What makes policy makers worried about is that an all-out reform for universal and nation-wide welfare is being called for in a bipartisan manner. It is believed by many that free school meals, free childcare, free medical treatments, and free tuition fees are possible without tax increases. The EU has undergone numerous trials and errors to hammer out current welfare policies and system throughout its long history. Therefore, the EU can serve as a good example for Korea to benchmark such invaluable lessons, hence both parties are recommended to set up as many policy dialogues as possible. And these policy dialogues for sharing experiences can possibly bring up numerous opportunities for concrete cooperation.

For green or environment –friendly economy, the EU members are predominant players in the global market, and EU's renewable energy market, in particular, is expected to grow up to US\$ 1 trillion in 2020. Globally, 80 percent and 40 percent of solar and wind power plants are located in Europe. In the meantime, Korea adopted green growth as a new development paradigm for the 21<sup>st</sup> century in 2008, and subsequently set up a 5-year strategic plan for green growth in 2009, followed by enactment of the Basic Act on Low Carbon Green Growth, the Act on Smart Grid, and the Green Architecture Law. Recently, the Act on Emission Trading Scheme was passed in the congress with bipartisan support and an ETS is supposed to be launched in 2015 in Korea. The Global Green Growth Institute (GGGI), which is a center for green growth research established by Korea and whose founding agreement has already been signed in the Rio+20 Summit in Brazil in June 2012, was launched as an official international organization in October 2012. The potential for cooperation is greater than ever since both feel the importance of creating jobs by economic growth, so it is important to exert efforts to come up with creative and practical areas or items for cooperation. In order to vitalise technical exchange and industrial cooperation at company level, active support from the governmental is essential. Particularly, Korea is willing to cooperate with the EU member countries in the next generation technologies of green growth.

#### **4.3 COOPERATION AT INTERNATIONAL LEVEL**

As aforementioned, the EU has been focusing on opening up markets through WTO multilateral negotiations by adopting new trade policies. It also has been leading the WTO DDA negotiation. In particular, the EU has been playing a leading role in proposing WTO-plus issue in service, investment, government procurement, property rights, non-tariff barriers, customs procedures, etc. A significant part of the tariffs in goods have been eliminated by FTAs, so it is necessary to liberalise the areas of service, government procurement, and intellectual properties in markets. While it has been actively pushing FTAs forward, Korea also has been agilely participating in the

WTO negotiations, recognising the significant of market liberalisation by multilateral trade. In addition, Korea has been working consistently to prevent protectionism from spreading out. In this sense, Korea and the EU should stick to the principles of free trade, cooperate to reject protectionism, and put joint efforts to achieve early conclusion of WTO negotiation.

Another front for international cooperation is the G20 summit. The G20, despite a plenty of criticism, is one of the premier intergovernmental congregations deciding global governance and solutions for global economic issues. Korea chaired the 2010 Seoul Summit, dedicating to play a bridging role between developed and developing nations to resolve issues global community now faces. Both parties share a number of topics for cooperation: financial stability, green growth, development cooperation, anti-terrorism etc.

#### **4.4 COOPERATION FOR EAST ASIA INTEGRATION**

FTA discussions and financial cooperation are actively taking place in East Asia. After ASEAN and Korea-China-Japan agreed with ASEAN+1 type of market integration, the ASEAN+3/ASEAN+6 or the TPP led by the US are being discussed, eventually boiling down toward the FTAAP. There are struggles for hegemony among the countries within the region as well as the possible conflicts resulted from the return of the US to Asia, but generally it seems to be moving toward integration. The East Asian integration is expected to provide opportunities for Europe as well. The European integration aimed to maintain political peace and stability, creating a common market, and leading the reshaping of the global order. It has great implications to East Asia. Particularly, the Korean peninsula is surrounded by four competing super powers- the US, China, Russia, and Japan- who are fighting for hegemony. In addition, the tension on the Korean peninsula is mounting more than ever following the development of the North Korean nuclear programmes and leadership transition. With a view to reunifying the two Koreas, Korea needs to build relationships and to cooperate with four major countries and the North in creative and practical manners. The EU, the origin of democracy, market economy, human rights and constitutionalism, should briskly spearhead in maintaining peace and achieving economic development in the region. The EU can play a considerable role as a mediator for maintaining peace and creating prosperity in this region. It is no longer appropriate for the EU to act as a bystander. Experiences and lessons piled up during the period of the European integration are highly applicable to this region. This is the reason why the EU is requested to be deeply involved in the process of the East Asian integration.

#### **5. CONCLUSION**

The Agreement is, no doubt, a historic monument and one of the best possible means ever for solidifying cooperation between both sides, coupled with the Korea-EU Framework Agreement. However, it does not necessarily guarantee a renewed and stronger relationship and co-prosperity. The destiny of the bilateral relationship depends on the willingness and efforts both Parties will make for the implementation of the Agreement in the future.

In addition, the Agreement is of great importance in that it embodies the new trade policies of both Parties by seeking comprehensive trade liberalization and high-quality trade deals. Accordingly it paves the way for sustainable economic development, enhancing competitiveness and job creation which both Parties should achieve to get out of a highly challenging situation the global community now faces. In particular, both Parties need to make ceaseless efforts to employment-friendly economic environment at home and abroad through opening markets in the bilateral and multilateral arenas.

Meanwhile, the Agreement is of mutual benefit in that it can invigorate policy dialogues in the political and security areas, as well as in the economic fields. The EU should play a critical part for the geo-political stability in East Asia and the unification of two Koreas.

## Endnotes

<sup>1</sup> KITA (2010), Fact about the EU-Korea FTA, p. 32, European Commission (2011), The EU-Korea Free Trade Agreement in practice, p. 3

<sup>2</sup> The program included the followings: ① exemption of tariffs on import of raw materials and capital goods used for export, ② reduction of indirect taxes on exported goods and inputs, ③ exemption of direct taxes and accelerated depreciation, ④ provision of financial resources with prime rate for export-related activities, ⑤ supply of utilities such as electricity with discounted rate for export industry. For more data and information, please refer to 'The Korean Economy – Six Decades of Growth and Development

<sup>3</sup> FTAs with developed countries, such as the Korea-EU FTA or the Korea-US FTA, have been expected to provide opportunities to reform economic structures or practices that do not meet international standards. In particular, development of services sector through opening markets is one of the most important purposes at which Korea aims via FTA.

<sup>4</sup> The opposition parties and NGOs have been against the ratification and entry into force of the KORUS FTA, calling the Investor-State Dispute System (ISDS), stipulated in the agreement of the KORUS FTA, one of poisonous clauses to be abolished. Just before the time the KORUS FTA took effect, the opposition parties made it public that once they came back to the ruling party through the victory in the general election in April 2012, they would nullify the KORUS FTA, as long as all the poisonous clauses on the ISDS were not removed in the agreement of the KORUS FTA. Whereas the Korean government and the ruling party have insisted that the KORUS FTA had been concluded in 2007 when the current opposition parties had been the ruling party and that the clauses on ISDS have remain unchanged although Korea and the US held an additional round of negotiations in December 2010 to pave the way for the ratification. It has also been argued that the ISDS is one of the global standards as it is being adopted in most of the world-wide 2676 investment treaties and Korea has included it in 81 of 87 investment treaties that Korea has concluded to date.

<sup>5</sup> It was adopted at a new policy document in Korea in the early 2011 but was not made public.

<sup>6</sup> <http://ec.europa.eu/trade/about/policy-making/>

<sup>7</sup> Consolidated version of the Treaty on the Functioning of the European Union - PART FIVE: EXTERNAL ACTION BY THE UNION - TITLE II: CCP - Article 207 (ex Article 133 TEC)

1. *The CCP shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The CCP shall be conducted in the context of the principles and objectives of the Union's external action.*
2. *The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the CCP.*
3. *Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 218 shall apply, subject to the special provisions of this Article.*
1. *The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.*
2. *The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.*
3. *For the negotiation and conclusion of the agreements referred to in paragraph 3, the Council shall act by a qualified majority.*
4. *For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.*
5. *The Council shall also act unanimously for the negotiation and conclusion of agreements:*

- 
- (a) *in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity;*
  - (b) *in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them.*
6. *The negotiation and conclusion of international agreements in the field of transport shall be subject to Title VI of Part Three and to Article 218.*
  7. *The exercise of the competences conferred by this Article in the field of the CCP shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of the Member States in so far as the Treaties exclude such harmonisation.*

<sup>8</sup> The Common Agricultural Policy is one of EU's oldest policies, playing a critical role in the process of the European intergration. Currently, some 40 percent of the EU's budget is being used for this policy.

<sup>9</sup> Paul Brenton, *The Changing Nature and Determinants of EU Trade Policies*, CEPS Working Document No. 150, October 2000, p. 1

<sup>10</sup> Kim, Cae-one (2007), *EU's Global Trade Strategy*, pp155-172

<sup>11</sup> European Commission (2006), *Global Europe: competing in the world – A Contribution to the EU's Growth and Jobs Strategy*, p. 2

<sup>12</sup> European commission (2010), *Trade, Growth and World Affairs – Trade Policy as a Core Component of the EU's 2020 Strategy*, p. 4

<sup>13</sup> European Commission (2010), *What is Europe's trade policy?*, p. 3

<sup>14</sup> European Commission (2006), *Global Europe: competing – A Contribution to the EU's growth and Jobs Strategy*

<sup>15</sup> [http://trade.ec.europa.eu/doclib/docs/2011/august/tradoc\\_148181.pdf](http://trade.ec.europa.eu/doclib/docs/2011/august/tradoc_148181.pdf)

<sup>16</sup> CEPII/ATLASS, *The Economic Impact of the Free Trade Agreement (FTA) between the European Union and Korea - Report for the European Commission, DG Trade (framework contract TRADE/07/A2: Korea II)* p.21

<sup>17</sup> European Commission (2011), *The EU-Korea Free Trade Agreement in practice*,

<sup>18</sup> For more objective description on the economic impact, this part was composed by referring to 'The Economic Impact of the Free Trade Agreement (FTA) between the European Union and Korea' - Report for the European Commission, DG Trade (framework contract TRADE/07/A2: Korea II) pp.22-31, 'Fact about the EU-Korea FTA' 10-28, pp, and 'The EU-Korea Free Trade Agreement in practice',

<sup>19</sup> For more information, see page 6-7 of *The EU-Korea Free Trade Agreement in practice*,

<sup>20</sup> For additional details, refer to Annexes 7-A-1 to 7-A-4 of the agreement

<sup>21</sup> For more objective description on the economic impact, this part was composed by citing the outcomes of 'The Economic Impact of the Free Trade Agreement (FTA) between the European Union and Korea' - Report for the European Commission, DG Trade (framework contract TRADE/07/A2: Korea II) pp. 4-6, and 'The EU-Korea Free Trade Agreement in practice'

<sup>22</sup> For more information, please refer to 'The EU-Korea Free Trade Agreement in practice',

## **References**

- CEPII/ATLASS, The Economic Impact of the Free Trade Agreement (FTA) between the European Union and Korea' - Report for the European Commission, DG Trade (framework contract TRADE/07/A2: Korea II)
- European Commission (2006), Global Europe: competing – A Contribution to the EU's growth and Jobs Strategy
- European Commission (2010), Trade, Growth and World Affairs – Trade Policy as a Core Component of the EU's 2020 Strategy
- European Commission (2010), Europe 2020 – A Strategy for Smart, Sustainable and Inclusive Growth
- European Commission (2010), Trade as a Driver of Prosperity
- European Commission (2011), The EU-Korea Free Trade Agreement in practice'
- European Commission (2011), The European Union Trade Policy 2011
- European Commission (2011), Economic Partnership Agreements (EPAs)
- European Commission (2011), Overview of FTA and Other Trade Negotiations
- <http://ec.europa.eu/trade/>
- Kim, Cae-one (2004), EU Economics
- Kim, Cae-one (2007), EU's Global Trade Strategy
- KITA (2010), Fact about the EU-Korea FTA
- Korean Embassy to the EU (2011), Euro in Crisis amid European Integration Deepening
- Krugman, P and Obstfeld, M (2009), International Economics – Theory and Policy
- Ministry of Foreign Affairs and Trade (2010), White Paper
- Paul Brenton, The Changing Nature and Determinants of EU Trade Policies, CEPS Working Document No. 150, October 2000
- Sakong, Il and Koh, Youngsun (2011), The Korean Economy – Six Decades of Growth and Development
- The Fifth Joint Conference on European Studies in Korea (2011), Provisional Application of Korea-EU FTA and Perspectives on the Strategic Partnership

## **Annex: Updated Trends on Korea-EU Trade and Investment**

The total trade volume between Korea and the EU reached US\$ 103.2 billion in 2011. Korea's export to the EU amounted to US\$ 55.7 billion, whereas the EU's export to Korea was US\$ 47.4 billion. Cars, wireless communication devices, ship equipments, etc. were main export items from Korea to the EU, while the EU exported semiconductor manufacturing devices, cars and components, medical stores, etc. to Korea. In 2011 the EU was the 3<sup>rd</sup> largest trading partner for Korea following China and Japan, and Korea was the 8<sup>th</sup> for the EU.

Trade volume between Korea and the EU (US\$ billion, %)

	2006	2007	2008	2009	2010	2011
Trade Volume	78.5 (10.6)	92.8 (18.2)	98.4 (6.0)	78.8 (-19.8)	92.2 (17.0)	103.2 (11.9)
Export	48.5 (11.0)	56.0 (15.5)	58.4 (4.3)	46.6 (-20.2)	53.5 (14.8)	55.7 (4.1)
Import	30.1 (10.1)	36.8 (22.5)	40.0 (8.6)	32.2 (-19.4)	38.7 (20.1)	47.4 (22.5)
Balance	18.4	19.2	18.4	14.4	14.8	8.3

\* ( ): % of increase compared to the previous year, source: Ministry of Knowledge Economy

Meanwhile, the EU is the biggest investor to Korea. The EU invested US\$ 5.0 billion in Korea in 2011, 36.5 percent of US\$ 13.7 billion, the total investment in Korea in 2011. The accumulated amount of EU's investment reached US\$ 64.7 billion as of the end of 2011, 36.2 percent of US\$ 178.6 billion, the total inbound investment in Korea. On the other hand, Korea invested around US\$ 2.9 billion in 2011.

Investment Trends between Korea and EU (US\$ Billion)

	2006	2007	2008	2009	2010	2011	Total ( '62 ~ '11)
EU → Korea	5.0	4.3	6.3	5.3	3.2	5.0	64.7
Korea → EU	2.8	3.0	3.1	5.1	7.5	2.9	36.0

\* Source: Ministry of Knowledge Economy, Export-Import Bank of Korea

The trade and investment between Korea and EU have been steadily increasing since the ratification of Korea-EU FTA. Nonetheless, it is still far below the potential of Korea-EU cooperation.





## **REGULATORY COOPERATION FOR TRADE IN SERVICES IN THE EU AND US TRADE AGREEMENTS WITH THE REPUBLIC OF KOREA: HOW DEEP AND HOW COMPATIBLE?**

EUGENIA LAURENZA<sup>1</sup> AND JAMES MATHIS<sup>2</sup>

### **1. INTRODUCTION**

This paper makes a comparative analysis of the approaches used for trade in services by the European Union (EU) and the United States (US) in their respective economic integration agreements with the Republic of Korea. Both trade agreements have made commitments to eliminate barriers and provide national treatment for trade in cross-border, commercial presence, and professional services.

Of particular interest are the approaches being developed in these agreements for the subjects of regulatory cooperation as these rules affect the delivery of a service and the ability of foreign firms and services providers to function in the market. In our discussion, we subdivide this general theme of regulatory cooperation into two areas, transparency and domestic regulation. 'Transparency' includes publication and notice, rights to inquire and respond, and elements of administrative proceedings, such as the right to notice and to be heard. Within 'domestic regulation' we consider tests for assessing domestic rules in light of the trade objectives of the parties and convergence activities, such as references made to international standards. 'Recognition' is also included as a subject under domestic regulation where parties may develop approaches for accepting the equivalency of each other's diplomas, licenses or certificates. In addition we also compare the agreements' provisions for competition policies, as these can affect the ability of firms to function in the domestic market. Finally, we look at the larger context of the agreements' institutional settings for maintaining processes of regulatory cooperation and their systems of recourse (dispute settlement).

A number of these aspects were raised in the 2011 WTO Annual Report on preferential trade agreements, which found an increasing emphasis on 'deep integration' subjects, and documented the trend for trade agreements to concentrate on 'behind the border' barriers to trade and establishment.<sup>3</sup> Since services trade is, by its nature, predominantly governed by domestic regulations - rather than by traditional border restrictions - it serves as a most appropriate subject area for identifying some the elements that may be occurring in these deeper integration trade agreements.

Several points of methodology should be briefly noted. First is the selection of these two trade agreements by the EU and the US with Korea as a basis for our analysis and comparison. The agreements are both relatively recent EU and US trade agreements with a single common signatory that is also an economically developed service economy.<sup>4</sup> All these parties have a continuing stake in the development of international trade and services via the GATS or otherwise. The underlying assumption suggested by studying these agreements is that if there are new regulatory developments and/or cooperative approaches on the horizon for services trade, then one could expect to find them emerging in recent developed-country agreements like these. If these innovations are present, then we can proceed to characterise and compare the provisions and perhaps see some implications that might flow from the commonalities and differences in each.

This raises a second question: how to characterise whether a provision is 'deep' integration or not. While this is inevitably subjective, our preference is to move beyond a more narrow view of 'hard' or 'soft' law that relies only on an examination of whether the text says 'shall' or 'may', and consider other elements including the clarity of the provisions, the establishment of on-going systems and the possibility of recourse.<sup>5</sup> This recognises that although many of the domestic regulation areas are treated in softer law fashion, they are nonetheless intended by the parties to achieve certain results in the form of on-going processes.

A third consideration is how to assess the agreements' compatibility. Here, we refer to the common signatory Korea and ask whether the resulting overall regulatory environment is rendered legally coherent while it engages these multiple agreements. This is subject to the understanding that Korea also has its *own* approaches to these subjects that could also be expected to be reflected in the some outcomes of its trade agreements. Finally, to the extent we see the development of common approaches, can we draw any implications in these developments for the multilateral trading system and for the course of deeper integration approaches among larger groups of countries over time?

The paper begins by examining each agreement's general regulatory provisions covering all trade (goods and services), and proceeds through the general services chapters and their more specific sectoral provisions. The subject areas examined in turn are as noted above: transparency (notification and publication); regulatory cooperation (harmonisation, recognition and their related mechanisms); related competition policies; and finally, institutional considerations including dispute settlement and recourse. We conclude that most areas surveyed show very compatible but relatively 'light' approaches by the parties to the two agreements. 'Light' suggests that while most subjects reviewed do not display binding obligations, they do commence processes of regulatory cooperation, albeit with somewhat vague objectives for expected results. The subject area of transparency demonstrates some stronger benchmarks that might also raise some regulatory compatibility issues for the common party, Korea. Each side of this 'deep v. shallow' coin presents its own implications for the multilateral trading system.

## **2. THE US – KOREA FREE TRADE AGREEMENT (KORUS)**

The formal title of this trade agreement is: 'Free Trade Agreement Between The United States Of America And The Republic Of Korea'. It is commonly known as the 'KORUS' agreement. The agreement negotiations were substantially completed in the spring of 2007 and ratified by each party in October (US) and November (Korea) of 2011.<sup>6</sup> The agreement's initial provision of Article 1.1 states that the parties are establishing a free trade area in accordance with GATT Article XXIV and GATS Article V. For international trade in services, the KORUS agreement has four separate chapters, one each for cross border trade in services (Chapter 12), Financial Services (Chapter 13), Telecommunications (Chapter 14), and Electronic Commerce (Chapter 15). In addition there are annexes for nonconforming measures for services, investment and financial services. The agreement has a separate Chapter 11 for investment. In this chapter, market access for cross-border investment, which includes aspects of the GATS mode for commercial presence, is found in its national treatment article which

extends to establishment and acquisition.<sup>7</sup> Otherwise, the substantive provisions of Chapter 11 resemble a bilateral investment treaty.

The cross border services chapter is the broadest of the KORUS agreement's chapters dealing with services. Its definitional scope does not precisely mimic the GATS language of four modes of supply. Here, elements of GATS modes 3 and 4 (commercial presence and temporary movement) are merged, i.e. '(c) by a national of a Party in the territory of the other Party'.<sup>8</sup> The definitional scope of the cross border services chapter 'does not include the supply of a service in the territory of a Party by a covered investment...'. This is covered by the investment chapter, which defines 'investment' to include the commitment of capital in the form of an enterprise.<sup>9</sup> To the extent that such an enterprise would deliver a service, the investment chapter appears to control that activity, at least to the extent of any inconsistency with the cross border services chapter.<sup>10</sup> An additional level of hierarchy is established as the investment chapter also yields to the superiority of the financial services chapter for any measure covered there.<sup>11</sup>

The Agreement has three sectoral chapters: Financial Services (Chapter 13), Telecommunications (Chapter 14) and Electronic Commerce (Chapter 15). Each of these chapters prescribes its own relationship to the other chapters of the agreement (including cross border and investment chapters) and to the agreement's general chapters, through different methods of incorporation or exclusion. Thus, the financial services chapter incorporates items from other chapters by specific article reference. The electronic commerce chapter incorporates all applicable provisions from the chapters on cross border and investment, but then provides its own exceptions and list of nonconforming measures. The telecommunications chapter is overall silent on incorporation, suggesting that anything relevant from another chapter applies to the subjects in telecommunications. Any peculiarities caused by these various relationships will be raised when pertinent in the regulatory subject area discussion, to which we now turn.

## **2.1 TRANSPARENCY**

The KORUS agreement has its own general chapter (21) on transparency. A publication article in the chapter applies to any matter covered by the agreement and commits each party to publish in advance its laws, regulations, procedures and administrative rules, and to provide interested persons and the other party a reasonable opportunity to comment on the proposals.<sup>12</sup> 'Interested persons' is not defined in the chapter and can certainly be read to include private parties (firms) as well as public entities. For publishing proposals, in most cases there is an additional timing provision of not less than 40 days prior to the date public comments are due. This provides a benchmark for an open comment process, and for those proposals finally adopted, publication of them is to include an explanation of the purpose of and rationale of the regulation, which 'shall' address the 'significant, substantive comments received during the comment period...'.<sup>13</sup> There is also a provision providing for a prompt response to a party request for information on any proposed or actual measure that might affect the operation of the agreement regardless of its notification.

The agreement's general transparency chapter also contains two articles on administrative proceedings and their appeals, which cover the same scope as the notification and publication provisions.<sup>14</sup> These provide for

notification of proceedings and a reasonable right to be heard to persons of the other party that are directly affected by a proceeding. Each party also has an obligation to provide for an impartial review of final administrative actions for matters covered by the agreement, and are also granted a reasonable opportunity to support or defend their positions.

These KORUS agreement's transparency provisions are interesting in that they extend notice and participation for administrative actions and reviews to 'persons' of the other party rather than to the other signatory party alone. They set a fairly clear benchmark on the form and time of notice to the Parties and for responding, and create a general standard for the impartiality of those officers who govern the review. Apart from these due process standards, the provisions otherwise rely on the 'good faith' of a party applying its own laws. In this sense, the provisions could be characterised as a form of procedural national treatment for interested and affected private persons of each signatory party.

The agreement's chapter on cross-border trade in services provides its own Article 12.8 for 'Transparency in Developing and Applying Regulations'. This requires each party to have a mechanism for responding to inquiries from interested persons regarding regulations that fall under the subject matter of the chapter. This extends the scope of the general transparency chapter by establishing an on-going response system for inquiries made on the operation of existing regulations, and not just on proposals.

### **Sector-specific provisions**

Additional provisions on transparency and notification are found in the agreement's chapters on financial services and telecommunications. As indicated in the introduction, the electronic commerce provisions incorporate all the applicable provisions from the other chapters on cross-border services and financial services, and of course, the agreement's overall general provisions.

Article 13.11 (Transparency) in the financial services chapter supplements the general transparency articles from Chapter 21. It stipulates that a return address for comments be provided by the publishing party, with a further notation on the practice of the Korea Financial Supervisory Service. The balance of the article deals with the handling of applications for the supply of financial services, including information on the status of applications, timely (120 days) decisions, and providing applicants with the reasons for denial. This section is a fine-tuning exercise that tailors the provisions to applications.

The approach in telecommunications reflects a similar fine tuning; the core components from Chapter 21 are represented but with more direct reference to rulemaking by telecommunications regulatory bodies and their measures on tariffs, technical interface, conditions for attaching equipment to the network, and permit and licensing requirements.<sup>15</sup> The telecommunications chapter also has a provision with elements of transparency for licensing in the criteria and procedures, periods of decision-making, and disclosing the terms and conditions of all licenses in effect.<sup>16</sup>

Overall, these transparency provisions facilitate the underlying scheduling of services commitments and the process of foreign providers adapting to the local market. They appear to proactively bring interested foreign services providers into the domestic process.

## 2.2 REGULATORY COOPERATION

As noted, the KORUS agreement does not have a general chapter on regulatory cooperation or a regulatory framework. Its chapter on institutional provisions (Chapter 22) establishes a joint committee for the governance of the agreement as a whole (Article 22.2), co-chaired by the US Trade Representative and the Korean Trade Minister. The joint committee is the sole governing 'institution' established by the agreement. There is no general provision directing the committee to develop any particular regulatory approach to the agreement's subject matter.

### 2.2.1 DOMESTIC REGULATION

The KORUS agreement does not have a general chapter on regulatory cooperation. The cross-border services chapter does have an article on domestic regulation (Article 12.7), which is directed at the process of obtaining authorisation when this is required as a condition for obtaining the legal right to supply in the market. There are elements of transparency requiring authorities to inform the applicant of their decision within a reasonable time and to inform the applicant of the status of the application, subject to authorisation requirements set out in a party's schedule to Annex II for nonconforming measures. The balance of the article mimics some elements of GATS Article VI (Domestic Regulation) in providing that qualification requirements and procedures, technical standards and licensing requirements, be based on objective and transparent criteria and not be themselves a restriction on the supply of a service. These itemised conditions are formed 'with a view' that they 'do not constitute unnecessary barriers to trade in services'. This phrasing suggests that a necessity test itself is not being applied as a legal criterion for assessing the restrictiveness of a requirement. GATS Article VI.4 is the essential comparative point of reference here as it calls for disciplines that 'shall aim to ensure that such requirements are ... (b) not more burdensome than necessary to ensure the quality of the service...'.<sup>17</sup>

One can conclude from this treatment that the KORUS agreement is not moving beyond the status of the GATS negotiations on this point, and is not seeking to develop any advanced approach on its own for assessing the trade restrictiveness of a domestic requirement for permission to supply. This is confirmed when we see that any future results from the WTO GATS negotiations regarding Article VI are to be incorporated into the KORUS agreement and, in footnote 7, which indicates that nothing in the agreement shall bind a party's positions or approach to that GATS discussion.<sup>17</sup> Strikingly, with regards to the GATS Article VI comparison, there is no reference in the KORUS agreement to international service standards to be applied or considered between the parties, an improvement that one might think would be reasonably obtainable in a bilateral agreement between these two signatories.

### Sector-specific provisions

The chapter for telecommunications appears to be the only one of three sectoral chapters that provides standards for regulation in its Article 14.21 titled, 'Measures Concerning Technologies and Standards'. The orientation here is to draw a balance (with some criteria) between the value of allowing service suppliers flexibility to choose their

technologies of supply, and the right of regulators to prescribe technologies for legitimate public policy objectives. The article uses some language recognisable from the WTO Technical Barriers to Trade Agreement (TBT Agreement), for example, that measures limiting technology serve a legitimate public policy and not be 'prepared, adopted, or applied in a manner that creates unnecessary obstacles to trade',<sup>18</sup> or that technical requirements be based on performance rather than design or descriptive characteristics.<sup>19</sup> There are additional legal criteria to be applied when a party does choose to adopt a specific technology or standard, in that such a decision must be based on rulemaking with a determination that market forces cannot be expected to achieve the same public policy result, and that suppliers be allowed an opportunity, during and after rulemaking, to demonstrate that alternative technologies will also suffice for the same objective. Generally, the article sets out the kind of criteria that can be assessed by not only the rule-maker of a party, but by an arbitral body reviewing whether the domestic process has fairly limited a technology standard. In this sense, the provisions are legally quite firm, more along the lines of a 'hard law' expression, even while the underlying notion is assessing what is inherently a point of regulatory balance. A final 'independent regulatory bodies' provision is also found in the telecommunications chapter where the parties oblige themselves to ensure that their regulatory bodies in this sector do not own equity or maintain any operating or management role in a supplier. Decisions made by the body are to be impartial to all market participants.

#### *2.2.2 RECOGNITION*

Recognition is a voluntary activity in the cross-border services chapter; a party 'may recognise' the other party's standards or criteria for the authorisation or licensing of service suppliers. Recognition can be accomplished by harmonisation (or otherwise) by agreement or autonomously.<sup>20</sup> Where recognition has been granted by a party to a non-party, there is no obligation to extend it to the other KORUS agreement party (no MFN as otherwise would be provided by Article 12.3), but the excluded party does have a right to seek a negotiated accession to the existing agreement or to attempt to negotiate a comparable recognition arrangement.<sup>21</sup>

This relatively soft recognition approach is additionally detailed in the professional services annex to the cross border services chapter. However, the resulting recognition regime still retains a wholly voluntary approach to recognition. As such, where the 'Parties agree' they then assume only an obligation to 'encourage' their own relevant bodies to develop mutual standards or develop recommendations to the Joint Committee on mutual recognition, or to develop procedures for temporary licensing.<sup>22</sup> These activities can occur for professional service sectors upon which the parties may 'mutually agree' and they 'may agree' on the sectors listed by further appendix. Three sectors are listed by Appendix 12-A-1, engineering, architecture and veterinary services. The parties do not actually commit themselves to a process of commencing recognition for these listed areas, so they are being listed as potential areas where the parties may agree to go further.

While this is certainly not a strong set of recognition provisions, the institutional follow-up aspects hold some additional promise. This is because a working group is established for professional services with the remit to consider procedures for fostering recognition between relevant professional bodies, for developing model procedures for licensing and certification, and for dealing with inconsistent regional level measures that would

prevent recognition. The follow-up activities for the working group require it to report to the Joint Committee of the KORUS agreement within two years of the date of the agreement. The Joint Committee can then make its recommendations on the compatibility of the working group's report with the overall agreement, and if it does make a positive recommendation, then each party thereafter 'shall work with' and 'encourage' its own respective bodies to implement the recommendations.

This provides for some definite forward motion in the process of recognition, particularly with reference to the working group's remit and the obligation of reporting within two years, presumably with a recognition approach identified for specific services in hand. The soft 'encourage' language in respect to the actual certifying bodies may be a reflection of the inherently subnational and often nongovernmental nature of many professional certification bodies, certainly the predominant model in US professional service qualifications.<sup>23</sup>

### **Sector-specific provisions**

The chapter for financial services also provides recognition provisions for prudential measures.<sup>24</sup> These closely mimic the character of the general provisions in the cross border chapter in their voluntary approach to either autonomous or agreement-based recognition. As in those provisions, the parties have a right to attempt to secure the recognition that has been granted to a non-party.

Overall, the KORUS agreement charts a relatively informal process for future action that relies strongly on the voluntary good will of the parties going forward. While the Joint Committee has power to select the sectors for attention, there is no mechanism for ruling on requests and denials for recognition, and there is no legal structure for 'acts' to be promulgated for broader activities, such as vocational or medical certificates. What the agreement does with its 'identification and encouragement' approach reflects a form of 'going forward' in the style of informal rulemaking.

## **2.3 COMPETITION POLICY**

The KORUS agreement has a chapter for 'Competition Related Matters' (Chapter 16). The chapter does not establish independent regional legal criteria for monopolies or cartels, such as prescribing behaviour inconsistent with the proper function of the agreement. Rather, the approach is to make reference to the establishment and maintenance of existing national competition laws. There are provisions for designated monopolies and state enterprises which resemble the GATT and GATS Agreements on the same subjects. State enterprises cannot act in a manner inconsistent with the obligations of the agreement or accord discriminatory treatment. Designated monopolies have additional obligations to act by commercial considerations, and may not engage in anti-competitive practices.<sup>25</sup> Other competition provisions deal with transparency and cooperation for both competition and consumer protection. The competition cooperation provision is quite brief, referring simply to the instruments of mutual assistance, notification, consultation and information exchange. In contrast, the consumer protection provision is more detailed.<sup>26</sup> The obligations to maintain laws and for agency cooperation are exempt from dispute settlement. The provisions on state monopolies and designated monopolies are not exempt from dispute settlement.

#### **2.4 INSTITUTIONAL ASPECTS / DISPUTE SETTLEMENT**

The KORUS agreement is governed by a Joint Committee. Comprised of officials from each Party and co-chaired by the United States Trade Representative and the Korean Minister for Trade, it operates entirely by consensus. The Joint Committee is obliged to supervise the implementation of the agreement and to supervise its committees, working groups and other bodies, to seek to resolve disputes, and to consider any matter that affects the operation of the agreement. The Joint Committee may establish additional bodies than those called for under the existing provisions, and may also consider amendments or modifications to the agreement and its commitments. It also has the power to issue interpretations of the provisions.<sup>27</sup> The frequency of meetings is dictated by a regular session each year to be held alternately in the territory of each party, and within 30 days upon a request by a party.

The general dispute settlement provisions in Article 22 of the KORUS agreement follow an ad hoc panel model with additional procedures for adequacy of compensation or compliance. The agreement requires consultations with and referrals to the Joint Committee when a measure is claimed to be inconsistent with a party's obligations under the agreement, or has otherwise failed to carry out its obligations. A cause of action is also provided for benefits reasonably expected to accrue. This does not apply for cross-border services. Following consultations and a failure to resolve the matter by the Joint Committee, a party then has a right to refer the case to a three-person ad hoc panel which is to return a report within 180 days of the appointment of the panel chair. Implementations of the panel's recommendations are to be made by elimination of the party's non-conforming measure. If a measure is not resolved within 45 days, then the responding party shall enter negotiations for compensation and failing that, a suspension of equivalent benefits by the complainant, which is also reviewable by a reconvened panel. The system also has a final procedure permitting a compliance review on the respondent's request. The agreement has a choice of forum clause between it and the WTO stating that the choice of forum by the complainant is exclusive.

The Financial Services chapter of the agreement provides for additional expertise criteria for panel selection in a state to state case within this subject area, and limits suspension of benefits only to the financial services sector.<sup>28</sup> Additional provisions for investment disputes defended by nonconforming measures under the financial services annexes are provided but beyond the scope of the discussion here.

### **3. THE EU – KOREA FTA**

The free-trade agreement (FTA) between the EU and Korea (formally, the 'Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part') was implemented on 1 July 2011, after eight rounds of negotiations conducted between May 2007 and October 2009, and was signed on 6 October 2010. It not only constitutes the first FTA signed by the EU with an Asian country, but is also the most comprehensive and far-reaching FTA concluded by the EU so far, inasmuch as it provides for commitments and obligations on aspects traditionally left outside the scope of FTAs, including investment



(through establishment), non-tariff barriers, competition and state aid, public procurement and intellectual property rights.

Through the agreement, parties establish a free trade area on goods, services, establishment and 'associated rules' (Article 1.1). The aim of the agreement is to liberalise trade in goods and services, in accordance with, respectively, GATT Article XXIV and GATS Article V (Article 1.2). In addition, the objectives include promoting competition in the parties' economies; liberalising government procurement; protecting intellectual property; and contributing to the expansion of world trade by, *inter alia*, removing barriers. Services are dealt with under Chapter 7, entitled 'Trade in Services, Establishment and Electronic Commerce'. This chapter provides the scope and definitions of the framework applicable to services, establishment and electronic commerce. It also includes provisions on cross-border supply of services (Section B), establishment (Section C), and temporary presence of natural persons for business (Section D).

The structure of the services and establishment chapter differs from the GATS template in a number of aspects. However, the terminology employed by the parties is widely taken from the GATS, including those areas which are not currently covered by the WTO (establishment in non-services sectors). Of specific interest here, Chapter 7 includes a section (Section E) on 'Regulatory framework', which aims, through a set of provisions of general application and sector-specific disciplines, to enhance regulatory cooperation by strengthened transparency provisions and regulatory dialogue, and regulatory convergence through mutual recognition or minimum harmonisation. The provisions of general application cater for mutual recognition, transparency, domestic regulation and governance. Sector-specific provisions are included for computer services (Sub-section B), postal and courier services (Sub-section C), telecommunications services (Sub-section D), financial services (Sub-section E) and maritime transport (Sub-section F). Electronic commerce is dealt with in Section F of Chapter 7, with parties agreeing to promote the development of electronic commerce through regulatory cooperation (Article 7.49).

Other chapters in the FTA touch upon the issues of competition, transparency and dispute settlement and are relevant to services trade as they apply horizontally throughout the whole agreement. The relationship between the specific provisions contained in Chapter 7 and the other provisions of general application is, in most cases, clarified in Chapter 7. For example, the transparency obligation contained in Article 7.22 builds upon the transparency mechanism of general application established in Chapter 12 of the agreement, which is expressly recalled. Another example is provided by Article 7.45 on dispute settlement on financial services, according to which the general provisions on dispute settlement apply except as otherwise provided in the article.

### **3.1 TRANSPARENCY**

The EU – Korea FTA includes a chapter devoted to transparency (Chapter 12) having general application. In addition, a specific transparency article for services and establishment can be found in Chapter 7.

Chapter 12 aims to create an efficient and predictable regulatory environment for economic operators, 'especially small ones'. While reaffirming the parties' commitments to the relevant WTO obligations, the provisions of Chapter 12 lay down a number of clarifications and improvements in terms of transparency,

consultation and a better administration of measures of general application, as they may have an impact on any matter covered by the FTA. The scope of the general transparency mechanism covers 'measures of general application', which comprise any general or abstract act, procedure, interpretation or other requirement, including non-binding measures. It does not however include rulings that apply to a particular person.<sup>29</sup> A publication provision requires parties to ensure that such measures of general application are readily available to 'interested persons' in a non-discriminatory manner via an officially designated medium, and in such a manner as to enable interested persons and the other party to become acquainted with them; to provide an explanation of the objective of, and rationale for, such measures; and to allow for sufficient time between publication and entry into force of such measures, taking 'due account' of the requirements of legal certainty, legitimate expectations and proportionality.<sup>30</sup> 'Interested persons' are natural and legal persons that may be subject to any rights or obligations under measures of general application, which require that private parties and public utilities figure among the beneficiaries of this obligation.

The general transparency mechanism contains no obligation for parties to 'publish in advance' measures of general application. Parties are simply required to 'endeavor' to publish in advance proposed measures of general application. When such advanced publication occurs, parties must provide opportunities for interested persons to comment, allowing, in particular, sufficient time for comments to be transmitted. The softer language (*i.e.*, endeavor) applies to the consideration that parties must take of the comments provided by interested persons on proposed measures.

Chapter 12 requires the establishment and maintenance of appropriate mechanisms (such as enquiry or contact points) for responding to enquiries from interested persons.<sup>31</sup> This obligation covers measures of general application which may have an impact on matters covered by the FTA, and which are both proposed or in force, as well as the way in which they would be applied. There appears to be no clear obligation to provide for answers to such enquires. The relevant article clarifies that where responses are provided, they are for information purposes only, and are not definitive or legally binding. There is an obligation for parties to promptly provide information and respond to questions pertaining to any actual or proposed measure that are transmitted by the requesting party (regardless of whether the requesting party has been previously notified of that measure). This obligation applies to parties only, thus establishing a double standard on this particular aspect of transparency (one for interested persons, and one for the parties to the agreement). There is also an obligation to endeavor to identify or create contact points for interested persons of the other party, with the aim of seeking to 'effectively resolve' problems that may arise from the application of measures of general application. Such a process should be 'easily accessible, time-bound, result-oriented and transparent'.<sup>32</sup> There is no further detail on the profile of such a mechanism, but the wording of Article 12.4 suggests that it may act as a non-judicial means for the swift solution of (technical) obstacles and hurdles created by the application of 'measures of general application'. This represents a novelty in EU FTA's, although comparable mechanisms have been seen in agreements between Asian countries.<sup>33</sup>

The agreement's transparency chapter includes two articles on administrative proceedings, and reviews and appeals of administrative action relating to matters covered by the FTA. The administrative proceeding

provision<sup>34</sup> requires parties to endeavor to provide interested persons notice of the initiation of a proceeding and afford such persons reasonable opportunity to present facts and arguments in support of their positions, in so far as time, the nature of the proceeding and the public interest permit. Each party must also provide an impartial review of an administrative action relating to matters covered by the agreement, and must ensure that parties to the proceedings are provided with the right to (i) a reasonable opportunity to support or defend their respective positions and (ii) a decision based on evidence and submission of records or, where required by its law, the record compiled by the administrative authority.<sup>35</sup>

As in the KORUS agreement, one of the most interesting aspects of the general regulation on transparency under the EU – Korea FTA is the extension of some transparency requirements to private persons. In addition, the inclusion of non-binding measures within the scope of the mechanism allows greater scrutiny and representations to be made over instruments such as governmental guidelines and ‘best practices’. The provisions on administrative proceedings are generally aimed at ensuring consistency, impartiality and reasonableness of administrative action, but fail to set binding requirements on the notice to be given to interested persons. More stringent are the provisions on reviews and appeals, which include a standard on the impartiality of the office in charge of reviews, other due process requirements and a provision on enforcement. A dedicated provision on ‘Regulatory quality and performance and good administrative behavior’ calls for cooperation in the promotion of regulatory quality and performance, including the exchange of information and best practices on the parties’ respective regulatory reform processes, and impact assessment. This provision is of relevance inasmuch as it may *de facto* provide additional context for transparency and representations in the regulatory reform processes framework. Finally, a non-discrimination standard requires parties to apply transparency standards to interested persons of the other party no less favorable than those accorded to its own interested persons, to the interested persons of any third country or to any third country, whichever is best.<sup>36</sup>

An additional services and establishment-specific article on ‘transparency and confidential information’ is found in Chapter 7 of the agreement in the section devoted to ‘Regulatory Framework’.<sup>37</sup> The provision clarifies the scope of transparency requirements in the area of services and establishment, and requires parties, through the general mechanism provided for in Chapter 12 of the agreement, to respond promptly to all requests by the other Party for specific information on: (i) international agreements or arrangements (including mutual recognition agreements), which affect matters falling within the services chapter; and (ii) standards or licensing and certification criteria to which services suppliers may be subjected. The same article provides for enhanced transparency standards in case the supply of a service is subject to an application procedure. Such disciplines are addressed to the relevant regulatory authorities, which must (i) make publicly available the requirements for completing applications relating to the supply of services; (ii) upon request, inform the applicant of the status of its application, and notify the applicant, without ‘undue delay’, of the need for additional information; and (iii) to the extent possible, inform the applicant for the reasons for denial. Regulatory authorities are to take a decision on the application of an investor or a cross-border supplier within 120 days, and notify the applicant without undue delay when more time is needed for a decision to be finalised.

### **Sector-specific provisions**

The agreement has one sector-specific transparency provision that can be found in the regulatory framework for financial services (Section E, Sub-section E). A provision there requires parties to promote regulatory transparency in financial services. The obligation follows on parties' recognition of the importance of transparency in financial regulations and policies in facilitating access to each other's markets.<sup>38</sup> This provision of 'soft law' does not appear to add any *lex specialis* to the general transparency framework as it applies only to financial services.

Summarising, the transparency framework established under the EU – Korea FTA provides for an obligation to publish 'measures of general application', including making such measures readily available to interested persons, providing for an explanation of the objective of, and rationale for, the measure, and allowing for sufficient time between publication and entry into force. One of the most innovative aspects of the framework can be found in the involvement of private parties within this mechanism, as well as the inclusion of non-binding rules within the scope of the transparency obligation. Softer language is applied in relation to 'advanced publication' and the related opportunity to put forward comments and have them addressed. This general framework affects trade in services and establishment, with the clarifications seen above. Of particular relevance are the disciplines set forth for regulatory authorities evaluating cross-border suppliers' and investors' applications to provide services. These establish clear standards of transparency and procedural fairness which benefit services suppliers and investors.

### **3.2 Regulatory cooperation**

The provisions falling within 'regulatory cooperation' are one of the most interesting aspects of the EU – Korea FTA. As mentioned above, Chapter 7 of the agreement devotes all of Section E to 'Regulatory framework'. Through a set of general provisions and sector-specific disciplines, this framework aims to enhance regulatory cooperation through regulatory dialogue, and to foster regulatory convergence through mutual recognition or harmonisation of minimum common standards in specific sectors.

#### **3.2.1 DOMESTIC REGULATION**

While domestic regulation provisions are relevant for the category of regulatory cooperation, they also contain features which are important for transparency (*i.e.*, paragraphs 1 and 2 of Article 7.23, which mirror, respectively, paragraphs 3 and 2(a) of GATS Article VI). The relevant article frames the relationship between domestic regulation and services trade as it applies to the FTA, by requiring parties to 'endeavor to ensure', as appropriate for individual sectors, that measures relating to qualification requirements and procedures, technical standards and licensing requirements are 'based on objective criteria, such as competence and the ability to supply the service'; and 'in case of licensing procedures, not in themselves a restriction on the supply of a service'. This 'soft language' follows the common intention to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade, as

well as the recognition that parties maintain the 'right to regulate' and to introduce new regulations on the supply of services in order to meet public policy objectives.

No relevant body is established to develop common horizontal disciplines or minimum standards for specific sectors. The provision's low level of ambition is linked to the results of the ongoing GATS negotiations under paragraph 4 of GATS Article VI, or of any similar negotiations undertaken in other multilateral *fora*. Any future deeper commitment on the domestic regulation framework between the EU and Korea appears conditional to the achievement of (meaningful) results within the multilateral context.

The provisions of general application included in Section E on 'Regulatory framework' also contain a provision on 'Governance'. Parties are to ensure, to the extent practicable, that internationally agreed standards on the regulation of financial services sectors and on the fight against tax evasion are implemented and applied in their territory. The relevant article<sup>39</sup> lists some of these internationally agreed standards, but the list is by no means exhaustive. The aim of this provision is to ensure that the relevant international framework is equally applied and implemented by the parties. Although it represents a (further) form of harmonisation pursued by the EU and Korea, *i.e.*, through reference to internationally agreed standards, the non-exhaustive nature of the list of internationally agreed standards raises questions as to the exact scope of this provision.

### **Sector-specific provisions**

Sector-specific regulatory cooperation is anticipated in the EU – Korea FTA on computer services, postal and courier services, telecommunications services, financial services and maritime services. For electronic commerce, a separate section of the agreement lays out the principles, objectives and content for cooperation on regulatory issues. Regulatory cooperation in these areas takes different approaches, ranging from clarifications on the scope and content of the services (computer services; maritime services) to minimum regulatory convergence through the provision of sector-specific frameworks, whether to be developed in the future or already laid out in the agreement, containing regulatory principles, including pro-competitive clauses (postal and courier; telecoms).

The aim of these regulatory frameworks appears to be that of including binding provisions on the regulatory environments affecting the concessions exchanged and avoiding their impairment by uncertainty as to the scope of the commitments, or by practices, restrictions and domestic regulations commonly regarded as affecting trade in the services sectors concerned. The relevant experience taken into account by the parties includes, notably, that offered by the WTO, in which the two signatories attempt to solve obstacles to trade in services by either reflecting sectoral plurilateral disciplines agreed within the multilateral *fora*, or taking stock of on-going debates and tabled negotiation proposals.

For computer services, parties have clarified the classification and scope of such services incorporating elements of a tabled common proposal, together with other WTO Members in 2005,<sup>40</sup> and, in particular, of the 'Understanding on the scope of coverage of CPC 84',<sup>41</sup> co-sponsored by the EU and other WTO Members, but not Korea.<sup>42</sup>

The sole article dealing with postal and courier services requires the Trade Committee, the governing body established under the agreement comprising the parties' representatives, to set out the principles of the regulatory framework applicable to those services. The intention is to develop a framework that ensures that competition in postal and courier services is not restricted to a monopoly, following principles aimed at addressing anti-competitive practices, universal service, individual licences and the nature of the regulatory authority. The inclusion of pro-competitive and pro-regulatory principles in the postal and courier sector along the lines of what has been developed for the telecommunications services through the 'Reference Paper on Telecommunications Services' has been proposed by the EU in the context of the stalled DDA negotiations.<sup>43</sup> The agreement on future inclusion of such disciplines in the EU – Korea FTA, to be developed within three years after its entry into force, shows a common approach by the two signatories on the sector's regulation and identifies the scope for harmonisation through regulatory convergence on core issues.<sup>44</sup>

The regulatory framework on telecommunications is quite detailed and furthers, in certain respects, the one provided by the WTO 'Reference Paper on Telecommunications Services', to which both parties are signatories. For example, additional transparency requirements are anticipated for the 'regulatory authority' of telecommunications. New disciplines are included on the authorisation to provide telecommunications services. In particular, the relevant article stipulates that the provision of telecommunications services shall, to the extent practicable, be authorised following a simplified procedure.<sup>45</sup> It also provides a potential licensing requirement for attributions of frequencies, numbers and rights of way, but stipulates that the terms and conditions for such a license be made publicly available. Where a license is required, all the licensing criteria and the reasonable period of time required for a decision on the application to be made must be made publicly available; the reasons for a denial shall be made known in writing to the applicant upon request; and the license fees required must not exceed the administrative costs normally incurred in the management, control and enforcement of the applicable licenses. License fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

A specific provision deals with number portability, requiring parties to ensure that suppliers of public telecommunications transport services provide number portability, to the extent that is technically feasible, and on reasonable terms and conditions. Lastly, Article 7.36 of the EU – Korea FTA deals with recourse and review and the applied standard for the resolution of telecommunications disputes. In particular, parties are required to ensure that service suppliers have recourse to a regulatory authority (or other relevant body) of the other party to resolve disputes between suppliers or between suppliers and users. Further standards are envisaged where disputes arise between suppliers of public telecommunications transport networks or services. Here parties must ensure (upon request of either party to the dispute) that a binding decision is issued to solve the dispute with the 'shortest delay possible' and, in any case, within a reasonable period of time. Article 7.36 further provides for the appeal of such decisions of regulatory authorities (including the standard of impartiality of the appeal body in relation to specific disputes) and for judicial review.

As in the telecommunications sector, the regulatory framework for financial services reflects, with some differences, the one agreed within the WTO framework. For example, the definitions incorporate both those listed

in the Annex on Financial Services and the WTO Understanding on Financial Commitments. Other WTO elements have either been expanded or their scope has been clarified, such as the provision on self-regulatory organisation, which not only demands the anticipated WTO national treatment requirement but also an MFN obligation. The agreement also inserts new provisions such as, *inter alia*, the loose provision on transparency in financial regulations and on prudential carve-outs seen above. A set of specific exceptions are also anticipated for financial services.

For international maritime services, the relevant regulatory framework provides a set of definition and principles, as well as a set of obligations concerning access to the parties' international maritime markets and trades, the establishment of international maritime services suppliers for the other party (which must be granted under conditions no less favourable than those accorded to domestic services suppliers or those of any third party), and for non-discriminatory treatment in the use of port services.

As mentioned above, electronic commerce is dealt with in a separate section (Section F). Here the approach chosen by the parties is that of cooperation on regulatory issues. In particular, the parties agreed on a common set of objectives and principles, including the applicability of the WTO to measures affecting electronic commerce. Neither party is to impose customs duties on deliveries by electronic means. Regulatory cooperation continues through dialogue on regulatory matters, which are listed in Article 7.49 of the agreement and include, notably, issues concerning facilitation of trade through electronic commerce and the protection of consumers.

### 3.2.2 MUTUAL RECOGNITION

Article 7.21 of the EU – Korea FTA provides the institutional framework and the procedures for parties to negotiate mutual recognition agreements. The focus of the mechanism is on the criteria applied for the authorisation, licensing, operation and certification of services suppliers and investors in services sectors, particularly in professional services, the fulfillment of which is conditional for the provision of the service. The development of mutual recognition agreements relies on the parties' initiative, and on action by the relevant representative professional bodies, which 'shall be encouraged' by the parties to jointly develop and provide recommendations to the Trade Committee. Once the Trade Committee receives the recommendations developed by the professional bodies, it will, within a reasonable time, review them to determine if they are consistent with the provision of the agreement. If the recommendations have been found to be consistent, and a sufficient 'level of correspondence' is found between the relevant regulations of the parties, they are then required to negotiate a mutual recognition agreement. A reference to the need to comply with the WTO Agreement (and, in particular, with GATS Article VII) suggests that the Council for Trade in Services must be informed of any mutual recognition agreement negotiated by the parties.

A Working Group on MRA (mutual recognition agreements), operating under the Trade Committee and composed of the parties' representatives, is established to consider, for services in general as well as for individual services, (i) procedures for encouraging the relevant representative bodies in the parties' territories to consider their interest in mutual recognition; and (ii) procedures for fostering the development of recommendations on mutual recognition by the relevant representative bodies. Such procedures have not yet

been established. And, there is no preliminary indication of the sectors that will be opened to mutual recognition. It is likely these will be agreed at a later stage, in the context of developing the 'procedures' referred to above, and when a clear indication is provided by the 'relevant representative professional bodies entrusted to manage the process.

The relatively soft approach of this mechanism, which relies on the initiative of the professional bodies, is balanced by an obligation upon parties to 'encourage' such bodies to jointly develop and provide recommendations for mutual recognition. The efficacy of the mutual recognition mechanism will depend on the modalities and procedures through which professional bodies are encouraged, as well as on the actual 'level of correspondence' between the relevant regulations of the parties, which must be judged by the Trade Committee to be 'sufficient'. The agreement does not provide any criteria that would determine when the level of correspondence between relevant professional regulations is considered 'sufficient'. There is, therefore, an element of discretion left entirely to the parties.

The provision includes an obligation for a party, having entered into an agreement or arrangement on the recognition of prudential measures, to afford 'adequate opportunity' for the other party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation and, if appropriate, procedures concerning the sharing of information. Where recognition is accorded autonomously by a party, this must afford adequate opportunity for the other party to demonstrate that such circumstances exist.<sup>46</sup> The provision on recognition reflects an equivalent provision included in paragraph 3 of the Annex on Financial Services.

### **3.3 COMPETITION POLICY**

The EU – Korea FTA has a chapter on Competition (Chapter 11). This contains provisions on competition (*i.e.*, antitrust, public enterprises and state monopolies) and subsidies. Parties commit to a set of core principles, including: (i) to apply their respective competition laws, which are listed and defined for both parties;<sup>47</sup> and (ii) to maintain comprehensive competition laws which effectively address restrictive agreements, concerted practices and abuse of dominant market positions by one or more enterprises, and which provide effective control over concentrations between enterprises.<sup>48</sup> A list of activities restricting competition deemed incompatible with the 'proper functioning' of the agreement is provided, and it includes agreements between enterprises, abuse of dominant position, and concentrations between enterprises which impede effective competition. Parties committed to maintaining an authority (or authorities) responsible for the implementation of their respective competition laws, and to make available, upon request from the other party, public information concerning competition law enforcement activities and legislation. A provision states that parties recognise the importance of applying their respective competition laws in a transparent, timely and non-discriminatory manner, respecting the principles of procedural fairness and the rights of defence of the parties concerned.

Two provisions refer to, respectively, public enterprises and enterprises entrusted with special rights or exclusive rights<sup>49</sup> and state monopolies.<sup>50</sup> The agreement requires that, with respect to the former, neither party shall apply or maintain any measure contrary to principles of protection of competition laid out in Article 11.1, and



that they be subject to the parties' competition laws, inasmuch as the application of these principles and competition laws does not obstruct the performance of the particular task assigned to them. In the case of state monopolies, the agreement requires each party to adjust state monopolies of a commercial character to ensure that no discriminatory measure – *i.e.*, measures that do not comply with national treatment, as set out in the agreement – regarding the conditions under which goods are procured and marketed exists between natural or legal persons of the parties.

An article on cooperation stresses the importance of cooperation and coordination between the parties' competition authorities in furthering effective competition law enforcement.<sup>51</sup> There is an obligation for parties to cooperate in their respective enforcement policies, and in the enforcement of their respective competition laws, including through enforcement cooperation, notification, consultation and exchange of non-confidential information based on the Agreement between the European Community and the Government of the Republic of Korea concerning cooperation on anti-competitive activities that was signed in May 2009 (2009 Competition Cooperation Agreement).

Compared to a number of free trade agreements, the provisions on competition are quite far-reaching. However, under the agreement, parties are prevented from resorting to the dispute settlement mechanism for any matter arising in relation to the provisions on competition described above. A consultation mechanism is provided, in the absence of more specific rules in the 2009 Competition Cooperation Agreement, for parties to make representations, foster mutual understanding, or address specific matters arising in competition provisions. The subsidies section does not apply, for the most part, to services. In this area, parties 'shall use their best endeavours' to develop rules applicable to services, taking into account developments at the multilateral level, and to exchange information at the request of a party. The first exchange of views on subsidies to services is to take place within three years after the entry into force of the agreement.

### **3.4 INSTITUTIONAL ASPECTS / DISPUTE SETTLEMENT**

The EU – Korea FTA is managed by a Trade Committee, comprising representatives of the EU and Korea. The Trade Committee meets once a year (in Brussels or Seoul alternately) or upon either party's request, and is co-chaired by the Minister for Trade of Korea and the EU Trade Commissioner.<sup>52</sup> The Trade Committee must, *inter alia*, supervise and facilitate the implementation of the agreement and the work of all specialised committees, working groups and established bodies, and seek appropriate ways to solve matters which might arise in areas covered by the agreement, or disputes that may arise regarding the interpretation or application of the agreement. The agreement also establishes a number of specialised committees and working groups, under the auspices of the Trade Committee. Of relevance here, an example of the former is the Committee on Trade in Services, Establishment and Electronic Commerce; an example of the latter is the Working Group on MRA. The Trade Committee may also decide to establish and delegate responsibilities to specialised committees, working groups and other bodies.

The EU – Korea FTA has a dispute settlement mechanism which applies to any dispute concerning the interpretation and application of the provisions of the agreement, unless otherwise specified<sup>53</sup> and is provided in

Chapter 14 of the agreement. The mechanism is largely inspired by the WTO Dispute Settlement Understanding, with a consultations phase, an arbitration procedure, provisions on compliance (including a 'compliance arbitration') and 'temporary' remedies in case of non-compliance. The time-limits that apply at various stages of the dispute are shorter than the WTO Dispute Settlement Understanding, and there is no appellate review. A provision allows for the review of 'measures taken to comply' after the suspension of obligations.

The arbitration panel is an *ad hoc* panel composed of three arbitrators from a list of 15 individuals to be established by the Trade Committee. It interprets the provisions of the agreement in accordance with customary rules of interpretation of public international law. Interestingly, it is specified that where an obligation is identical to an obligation under the WTO agreement, the arbitration panel is to adopt an interpretation which is consistent with any relevant interpretation established under WTO DSB rulings. The arbitration panel is to make every effort to reach a decision by consensus. When consensus cannot be reached, the issue is to be decided by majority vote. The rulings are binding on the parties.<sup>54</sup> A specific provision deals with the relationship of this mechanism with recourse under the WTO dispute settlement.<sup>55</sup>

A sector-specific dispute settlement mechanism applies to the settlement of disputes on financial services subject to the specific rules provided for in Chapter 7. These act as *lex specialis* over the general framework described above. The specific carve outs relate to the list of individuals that are to serve as panellists in disputes relating to financial services (a separate list must be established by the Trade Committee with experts on financial services) and the composition of the panels (which must be drawn from the mentioned specific list). They also provide specific rules for remedies in case of noncompliance in disputes on measures also affecting financial services.<sup>56</sup>

#### 4. DISCUSSION

This study was drawn narrowly to consider only domestic regulatory issues as they apply to trade in services in only two trade agreements. This narrow approach allows more focus on the provisions at hand, and provides a more detailed description of what the FTA parties are attempting to achieve and how they are intending to achieve it in their regulatory approaches. Thus, to the extent that other regulatory mechanisms are specially tuned to other trade subjects of the agreement, such as trade in goods or technical barriers, this survey necessarily misses those innovations. At the same time, there are general chapters in these agreements that are relevant to all (or most) of the subjects of the agreements. For example, transparency and competition chapters are provided by both of these agreements, first generally but capable of being tuned somewhat in the services sections of the agreements. This 'general to specific' approach is not apparent in the 'regulatory cooperation' area where the frameworks for establishing mutual recognition are tuned to services trade from the outset.

We also see the inclusion in both agreements of the same subject areas within larger fields of transparency and regulatory cooperation. For transparency, both agreements have provisions on publication, right to comment, right of inquiry and response, and the treatment of parties in administrative actions. For regulatory cooperation, both agreements provide for a type of assessment standard for domestic regulations, and both address mutual

recognition for service providers. With this as a basis, we note some of the subtleties in the different sections treated.

#### **4.1 TRANSPARENCY**

##### *4.1.1 PUBLICATION AND RIGHT TO COMMENT*

Both agreements require that measures of general application be published and that an explanation of the objectives and rationale be provided. Both also require a reasonable time between publication and entry into force. The KORUS agreement has a clear obligation for any matter covered by it to be published prior to adoption, together with an obligation to accord interested persons and the other party a reasonable opportunity to comment. It also sets a timing benchmark of 40 days prior to the date for receiving comments and lays out the burden on the party opting to address comments in its final decision. The EU – Korea FTA is less rigorous on this aspect, maintaining the obligation of publication only for measures adopted, with a ‘best endeavour’ provision for proposed measures. When a party does publish in advance, interested persons are entitled to comment and must be given sufficient time for comments to be transmitted. In this area, the KORUS agreement appears more dedicated to drawing foreign operators into the administrative process of rulemaking. While neither agreement allows discrimination between domestic and foreign operators, the KORUS agreement is more committed to the process of participation itself.

##### *4.1.2 RIGHT OF INQUIRY AND RESPONSE*

The EU agreement uses a ‘split approach’ on the right of inquiry and the obligation to respond. Whether or not a proposed or adopted matter has been published, a party has a right to request and receive information from the other. However, there is no obligation to respond to inquiries from interested persons. The KORUS agreement alternatively provides this right in the dedicated cross-border services chapter (not the general chapter) and, for subjects in that narrower scope, provides the obligation to respond to inquiries from interested persons. The EU agreement indicates that when a response is made, it is for information purposes and not legally binding on the party. The legal effect of a response is not stated in the KORUS agreement. Other and subtler differences include some indicative benchmarking for time in the KORUS agreement, and some additional detailing on the making of a record in the EU agreement. This agreement also defines ‘interested person’ while the KORUS agreement does not.

##### *4.1.3 ADMINISTRATIVE REVIEWS*

Both agreements detail rights of participation and due process in administrative actions including rights to notice, participation, and a right of impartial review.

#### *4.1.4 SECTOR-SPECIFIC TRANSPARENCY PROVISIONS*

The KORUS agreement has sector-specific transparency provisions in both telecommunications and financial services, the first emphasising rule making and both putting some focus on the treatment of licensing applications. The EU – Korea FTA has a softer provision encouraging transparency for financial services.

#### *4.1.5 TRANSPARENCY CONCLUSIONS*

While both agreements address the subject of transparency, there are small differences in rights and obligations established throughout. Some of these differences simply reflect an emphasis on one point or another, and some can be said to be in the realm of softer law, and therefore perhaps not easily made actionable or clearly interpreted. But not all the provisions in transparency subjects are that soft, and where there are some clear legal rights being accorded, one has to assume that these are intended to be actionable.

This raises a question about how a party common to multiple agreements, in this case Korea, responds in its own domestic order to the different approaches in play with each separate signatory. Does it result in a complex and possibly fragmented domestic regulatory environment, or in a somewhat unified regulatory approach? One can imagine that the ‘easy’ way to obtain a more coherent result is to take the obligations from either agreement that set the higher thresholds of conduct and are also clear enough to be actionable, and then apply that process or standard through the domestic regulatory system and thereby extend the benefit to all, or at least to the signatory parties of the other agreement. For example, if one agreement sets a benchmark for a specific number of days between publication and closing for comments, this could be a standard fairly easily integrated into the overall regulatory approach, i.e., ‘we now use the 40 day indicator and consider that reasonable for all other agreements whether other agreements specify it or not.’ This would make a common regulatory regime.

Some other aspects are not so easily transferred. For example, these two agreements vary in designating the right to receive advance notice of a proposed rule and the obligation to respond to inquiries; in one, parties have a right to a response but interested persons do not. If one agreement does not provide that right for interested persons, then the common signatory (Korea) could arguably bifurcate its treatment of its responses since it has not bargained to take up the obligation to one of these other signatories. After all, why extend the treatment if the other side is not also taking on the same obligation?

On this particular example the function of a specific MFN clause in the EU – Korea FTA, which is not provided as a general right in either agreement, would also appear to have an impact as it extends better treatment offered interested persons (not parties) of any third country in respect of transparency standards. However one might choose to interpret the scope of this clause, it would appear that both Korea and the EU assumed an obligation to screen all of their trade agreements in order to locate points of preferential regulatory treatment, and then to actively extend that treatment to the other party to the agreement, or at least be prepared to do so if and when the other party invokes the clause.

Whether MFN might apply to an agreement or not, one can sense the complexity of the subtle variations in regulatory approaches and note that the resulting environment is not limited to the three parties discussed here, since all of them have more than only one or two of these agreements including, of course, Korea.

## **4.2 REGULATORY COOPERATION**

### **4.2.1 DOMESTIC REGULATION**

Both agreements treat standards for assessing domestic regulations in their respective services chapters, with the KORUS agreement less generalised in providing this only in the chapter for cross-border services. Both agreements provide that service requirements be based on 'objective criteria' and not be themselves 'restrictions on the supply of a service'; both thus apply two of the criteria also provided in GATS Article VI. Both agreements pose these criteria 'with a view' to ensuring that service requirements are not 'unnecessary barriers to trade'. Neither of them attempts to formulate a necessity test, i.e., a provision that would say, 'requirements shall not be more burdensome than necessary to ensure the quality of the service.'<sup>57</sup> One can conclude from this that for general domestic regulatory treatment, these provisions are arguably 'GATS minus' in that they do not include the explicit use of a necessity test that would call for assessment of lesser restrictive measures as a means of either validating or invalidating the regulation.<sup>58</sup> This more tentative construction is confirmed by provisions in both agreements that affirm the intent to translate any results from the GATS negotiations on Article VI into their respective FTA agreements. Rather than forming a new approach irrespective of the GATS process, the agreements take a 'wait and see' approach to what happens in the GATS process.

One might remark that if an FTA was going to go 'deeper' than applicable WTO regimes, then the provision of a test for assessing the balance point of a regulation should be an instrumental part of it. On the other hand, if such a test were refined in one these FTAs, then any dispute settlement issue arising from it would also not be presented in the dispute settlement forum of the WTO, since the WTO does not yet have such a test. That would leave the development of a key aspect of the developing regulatory trade law to be developed only within the confines of an *ad hoc* arbitral body system, and without the possibility of clarification of interpretation by a standing body on appeal. Given this, one can understand why the parties might prefer to wait and see how the GATS developments eventually emerge.<sup>59</sup>

### **4.2.2 SECTOR-SPECIFIC REGULATION PROVISIONS**

While both agreements use a very similar approach to general regulation, the EU agreement with Korea demonstrates a much more pro-active sector-specific agenda than does the KORUS agreement. The latter has three sectoral chapters of which only telecommunications sets out criteria for regulatory treatment, posing the use of a balancing test between the right of regulators to prescribe technologies and the need for service suppliers to choose their favoured technology of supply. In contrast, the EU agreement poses activities in regulation in telecommunications, e-commerce, computer services, postal and courier services, financial services and maritime services. These range from clarification of the scope of the service in question, to setting out goals for minimum regulatory convergence, to affirming pro-competitive approaches and non-discrimination. Telecommunications and financial services use the existing WTO GATS agreements on those subjects and add

to them. The treatment for postal and courier services draws principles from the existing WTO telecommunications framework and uses those for setting objectives for minimum regulatory convergence. Computer and maritime services both provide definitions of scope and classification that are in discussion but not yet settled in WTO law.

Here, the integration style of the EU is apparent. While the general treatment of regulation may not be so advanced, the sector activities are not only 'WTO plus' but also reflect a bit of 'EU minus' in at least broaching the idea of common principles and minimum regulatory convergence, coupled with a process intended to move it along over time. In this sense the services treatment in this agreement can be characterised as 'very regulatory' in nature.

#### **4.3 MUTUAL RECOGNITION**

The provisions in each agreement for recognition of qualifications in professional services show a close, if not nearly identical, approach. Both rely on a voluntary system of developing recognition over time, with the establishment of a working group operating under the governing Joint Committee / Trade Committee with the power to recommend procedures for encouraging professional bodies and for fostering its development. In both, the governing committee can accept recommendations and approve them, which has the effect of the parties encouraging their own professional bodies to establish the basis for recognition. There are minor differences on display where, for example, the KORUS agreement lists three sectors targeted for further action, and the EU – Korea FTA's reference to GATS Article VII and notification of recognition agreements. This otherwise high degree of alignment between the two systems is carried through in the financial provisions of each agreement which call for the possibility of recognising prudential measures.

While there is nothing mandatory about the recognition provisions of the agreements, they do set out a way forward of an institutional character, albeit one that relies on voluntary acts. The potential firmness of such a system is enhanced somewhat by the procedures developed by a working group and the 'decision' to move forward that can be generated by the governing bodies of the agreement. Given the somewhat less than productive history of voluntary recognition systems, one can question whether this type of approach is robust enough to generate the gains that are possible for professional services recognition. At the same time, the process requires the participation of numerous regulatory participants and professional bodies both public and private. In such an environment it is easy to imagine how a more mandatory 'top down' system could be developed and how it could take hold at agency levels and function institutionally. If these more voluntary systems prove unsuccessful over time, there is the implication that recognition in free-trade agreements remains aspirational in the absence of stronger and on-going rulemaking and of enforcement authorities.

#### **4.4 COMPETITION**

With a few differences, this regime also displays a high degree of alignment, particularly given the EU's history of emphasising competition in its trade agreements, with the US perhaps less so. This may be because the EU and Korea have an existing bilateral competition agreement and, arguably, not much can be added to this trade

agreement other than prescribing anti-competitive practices and linking them to the agreement as incompatible with its 'proper functioning'. The US agreement does not commit to this linkage, but it is a minor point in the absence of any formulation on regional competition policy. Both agreements address some conditions for public enterprises and those having special or exclusive rights, or state and designated monopolies in the KORUS agreement's terminology.

The generally close alignment of the two agreements on this subject may also reflect the fact that all the parties have well developed and functioning competition laws and authorities. Thus, the EU – Korea FTA does not carry the types of provisions found in trade agreements with countries without developed competition authorities, in which the criteria for the national law is set and possible to invoke safeguards if the law is not enacted and made functional.<sup>60</sup> The emphasis here is rather upon the maintenance of existing competition laws. Each agreement also has a cooperation provision with similar characteristics, both reciting the instruments of enforcement / mutual cooperation, notification, consultation and exchange of information, with the single difference that cooperation is stated as an obligatory activity in the EU – Korea agreement.

Both agreements also treat, with some different terminology, public enterprises (EU) / state enterprises (US) and enterprises entrusted with special and exclusive rights (EU) / designated monopolies (EU and US). Both agreements prescribe a non-discrimination requirement for public / state enterprises. Both agreements refer designated monopolies to the operation of competition principles or law with only slight differences in the point of reference. The KORUS agreement is silent on the treatment of subsidies and the EU – Korea FTA exempts them from applying to services, both thus having the same effect of non-application. Similarly, matters falling under the competition chapter are exempt from dispute settlement in both agreements, except for a difference in the KORUS agreement which provides that provisions on state monopolies and designated monopolies are not exempt. Another difference between the agreements is the EU sector-specific provision for developing disciplines for postal and courier services and a reference to the WTO reference paper for the supply of telecommunications. One does not expect convergence on the details of competition law in assessing anti-competitive practices. The emphasis is rather on cooperation among agencies in order to address practices which affect the markets of one or both of the parties. The provisions demonstrated by these two agreements do not go above (or below) what is normally seen in a modern free-trade area.

#### **4.5 INSTITUTIONAL ASPECTS / DISPUTE SETTLEMENT**

This is yet another area of very close alignment in the approach of both agreements. The governing committee of each (Trade Committee / Joint Committee) is composed at trade minister level and each has a quite similar, if not identical, set of powers, including the governance of other bodies established under the agreement and setting the point of reference for dispute settlement. Both meet yearly and in alternate locations. The dispute settlement sections for each agreement also have close alignment. Both use an *ad hoc* three-person panel procedure whose findings are given legal effect. Neither provides for an appeal process on questions of law. Both agreements provide for some additional criteria for panellists in disputes concerning financial services.

## **5. CONCLUSIONS**

There is such close alignment in the two agreements on the general approach to domestic regulation (*i.e.*, the GATS Article VI subjects) - mutual recognition, competition law, and institutional matters - that one can imagine each signatory being quite comfortable with the provisions of the other parties' agreement. Differences in scheduled commitments aside, one can imagine these elements extended to a plurilateral agreement between the three parties. This degree of convergence serves the common signatory Korea well, since what it engages on behalf of one party it engages on behalf of the other. These regimes then function as a single external 'boiler plate'.

A point in common on the substantive regimes listed immediately above is their overall lack of ambition in the sense of 'deeper integration'. This is not to say that there are no elements present that provide for clear rights and obligations, but that the objectives set for results are set somewhat low or are non-prescribed. This is most apparent in the GATS VI (regulation) elements, in which both agreements avoid including necessity and (the possibility of) proportionality testing. For mutual recognition, the 'process' itself is more the point, and the 'top down' aspect of institutional motivation has a decidedly light touch. Whether this is effective for generating recognition agreements in the medium and longer term is another question. While the competition provisions are more or less typical of what one would expect to see in agreements among developed country signatories with functioning laws, there is an absence of effort to reach a deeper level of integration. No regional policy is attempting to be framed, there is no process of attempting convergence in the assessment criteria for anti-competitive practices, and the cooperation mechanism, while provided as obligatory for one of the agreements, does not move beyond a recitation of common cooperation instruments. Aside from the application of dispute settlement procedures to the KORUS agreement's categories of state monopolies and designated monopolies, the agreements preserve the discretion of national competition authorities.

As a group (and institutional issues aside) we could say that these subjects are treated in a relatively 'shallow' but 'compatible' manner. That said however, consider the nature of regulatory barriers. Agreements in these subject areas carry the tone of establishing an on-going relationship. The processes established, light as they are, reflect an approach to regulation that allows a cooperative relationship to develop over time and the parties to make of it what they choose. While this may not be 'deep' in the sense of binding common rules and procedures, this is not to say that it may not bear fruit. It depends on what the parties make of it over time. While one can be sceptical that multiple recognition agreements might emerge from these light provisions, one cannot discount the fact that a process is provided to allow them to emerge.

This leaves the subjects of transparency and sector-specific domestic regulation, the two areas where there is more detailing in the provisions, and consequently more apparent divergence between the agreements. For transparency, because these countries will not likely be adopting common standards or otherwise changing their own standards, enhanced transparency can be a means of limiting the impact of these regulatory differences. Together they lay out the 'deeper' in deep integration and also raise more questions of how domestic systems function to service different agreements. These two areas may be characterised as 'deeper' and



'potentially less compatible'. The relationship element noted above is still present in these subject areas as well, but there is also a stronger reliance on clearer benchmarks.

Finally, we look at the multilateral implications. For the softer areas, one can imagine these types of processes being engaged in larger groups of states in agreements designed to encourage 'best practices'. However, the extent to which they succeed would have much to do with the same relationship aspect as noted above. Is this type of on-going cooperation possible in a larger and more disparate group of participants? Perhaps that is not a realistic expectation. For those deeper areas where some rules emerge, there may be a stronger argument for multilateral action. We have not chosen here to make a GATS most-favoured nation analysis of advanced transparency rules and regulatory sectoral treatments. But some of them may well affect the supply of a service and fall within the scope of the GATS general MFN obligation. More pertinent perhaps is the idea that regulatory systems are not that easily bifurcated for differential treatment. It may well be that when a regional party undertakes a transparency reform, this is likely to be extended to all as a matter of course. If so, then the larger trading system is benefitted. For those aspects that may be bifurcated, for example advance notice and the right to comment by private interested parties, such innovations could perhaps enter in to a larger discussion on generally enhancing GATS transparency. The same might be said for some of the advanced sectoral approaches, even while we acknowledge some of the sector approaches are built on GATS-annexed sectoral agreements. Overall, that these agreements approach so many subjects in a similar manner may also have resonance. After all, repeated practice can become custom.

## Endnotes

<sup>1</sup>Associate at FratiniVergano – European Lawyers, LLM University of Amsterdam. (e.laurenza@fratinivergano.eu)

<sup>2</sup>Associate professor and research fellow, Department of International Law and the Amsterdam Center for International Law, University of Amsterdam. (j.h.mathis@uva.nl)

<sup>3</sup>WTO, World Trade Report 2011, 'The WTO and Preferential Trade Agreements: From Co-existence to Coherence', WTO Secretariat, Economic Research and Statistics Division. 'Deep Integration' is defined in the report as referring to any arrangement that goes beyond a simple free-trade area. *Id.*, at 9.

<sup>4</sup>For example of Korea's development of an international services economy, EU services exports to Korea in 2010 were €7.5 billion. EU services imports from Korea in 2010 were €4.5 billion. DG Trade, Republic of Korea page visited 11-08-12. <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/korea/>

<sup>5</sup>For treatment of soft law in international law, see generally, A.T. Guzman and T.L. Meyer, 'International Soft Law', *Journal of Legal Analysis*, 2:1 (2010), 171-225, 173, 174; K. W. Abbott and D. Snidal, 'Hard and Soft Law in International Governance', *International Organization*, 54:3 (2000), 421-456, 424.

<sup>6</sup>Wall Street Journal, 'South Korea Clears U.S. Trade Deal', November 23, 2011, visited on 11-08-12. <http://online.wsj.com/article/SB10001424052970204531404577053413714833468.html>.

<sup>7</sup>Article 11.3, KORUS agreement.

<sup>8</sup>Article 12.13(a),(b) and (c), KORUS agreement.

<sup>9</sup>Article 11.28, KORUS agreement.

<sup>10</sup>There are however three articles in the cross border chapter which specifically indicate that measures covering investment are also subject to it. These are for market access (Article 12.4), domestic regulation (Article 12.7) and transparency (Article 12.8), as listed in Article 12.1.3(a). Thus, cross border services in the form of investment are covered by these three articles.

<sup>11</sup>Article 11.2, Relation to Other Chapters, KORUS agreement.

<sup>12</sup>Article 21.2(b), KORUS agreement.

<sup>13</sup>Article 21.4 (b) and (c), KORUS agreement.

<sup>14</sup>Articles 21.3 and 21.4, KORUS agreement.

<sup>15</sup>Article 14.20, KORUS agreement.

<sup>16</sup>Article 14.16, KORUS agreement.

<sup>17</sup>Article 12.7.2-3, KORUS agreement.

- 
- <sup>18</sup> Article 14.21, KORUS agreement. Compare WTO TBT Agreement, Article 2.2.
- <sup>19</sup> Article 14.21(5), KORUS agreement. Compare WTO TBT Agreement Article 2.8.
- <sup>20</sup> Article 12.9.1, KORUS agreement.
- <sup>21</sup> Article 12.2 and 12.24, KORUS agreement.
- <sup>22</sup> Article 12.2, KORUS agreement.
- <sup>23</sup> See for example of sub-federal recognition, US Australia agreement, GATS Article VII notification, State of Texas engineers certification agreement, 2010 Council for Trade in Services Report, available at, Council for Trade in Services Annual Report, available at, [http://www.wto.org/english/tratop\\_e/serv\\_e/s\\_coun\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/s_coun_e.htm).
- <sup>24</sup> Article 13.14, KORUS agreement.
- <sup>25</sup> Articles 16.3 and Article 16.2 respectively, KORUS agreement.
- <sup>26</sup> Article 16.1.7 and Article 16.6 respectively, KORUS agreement.
- <sup>27</sup> Article 22.2(2-3), KORUS agreement.
- <sup>28</sup> Article 13.18, KORUS agreement.
- <sup>29</sup> Article 12.1, EU-Korea FTA.
- <sup>30</sup> Article 12.3, EU-Korea FTA.
- <sup>31</sup> Article 12.4, EU-Korea FTA.
- <sup>32</sup> *Id.*
- <sup>33</sup> See, for example, the ASEAN Consultation to Solve Trade and Investment Issues (ACT), which is an informal, non-legally-binding dispute resolution mechanism consisting in an internet-based problem-solving network of government agencies created for business operators.
- <sup>34</sup> Article 12.5, EU-Korea FTA.
- <sup>35</sup> Article 12.6, EU-Korea FTA.
- <sup>36</sup> Article 12.8, EU-Korea FTA.
- <sup>37</sup> Article 7.22, EU-Korea FTA.
- <sup>38</sup> Article 7.39, EU-Korea FTA.
- <sup>39</sup> Article 7.24, EU-Korea FTA.
- <sup>40</sup> See WTO document TN/S/W/38.
- <sup>41</sup> The WTO Services Sectoral Classification List (MTN.GMS/W/120) is based on the UN Central Product Classification (CPC). CPC 84 is the UN CPC code for 'computer and related services'.
- <sup>42</sup> See WTO document TN/S/W/60.
- <sup>43</sup> See document TN/S/W/26.
- <sup>44</sup> Footnote 31 clarifies that the provision shall not be interpreted as intending to change the regulatory framework of the existing regulatory body in Korea which regulates private delivery service suppliers upon the entry into force of the agreement.
- <sup>45</sup> Article 7.29, EU-Korea FTA.
- <sup>46</sup> Article 7.46, EU-Korea FTA.
- <sup>47</sup> Article 11.2, EU-Korea FTA.
- <sup>48</sup> Article 11.1, EU-Korea FTA.
- <sup>49</sup> Article 11.4, EU-Korea FTA.
- <sup>50</sup> Article 11.5, EU-Korea FTA.
- <sup>51</sup> Article 11.6, EU-Korea FTA.
- <sup>52</sup> Article 15.1, EU-Korea FTA.
- <sup>53</sup> Article 14.2, EU-Korea FTA.
- <sup>54</sup> Article 14.17, EU-Korea FTA.
- <sup>55</sup> Article 14.19, EU-Korea FTA.
- <sup>56</sup> Article 7.45, EU-Korea FTA.
- <sup>57</sup> GATS Article VI.4(b).
- <sup>58</sup> Except noting that GATS VI also only poses the necessity test 'tentatively' in the context of developing future disciplines that would contain some version of that test.
- <sup>59</sup> At this writing, there is also an early discussion commencing of developing a plurilateral approach in the WTO for services liberalisation. It is too early to tell whether any such developments would include an approach to domestic regulation. See, Bridges Weekly Trade News Digest, 16:34, 'Services Liberalisation Talks Among Group of WTO Members Move Forward', 10 October, 2012.
- <sup>60</sup> Articles 36 and 37, EU – South Africa Trade and Cooperation Agreement, OJ L 311/16, 04-12-1999.

THE CLIMATE CHANGE LEGAL FRAMEWORK UNDER THE EU-KOREA FREE TRADE AGREEMENT: INTERACTION BETWEEN  
VARIOUS LEVELS OF NORMATIVITY

NICOLAS A. J. CROQUET\*

1. INTRODUCTION

The European Union ('EU'), its 27 Member States and the Republic of Korea signed a Free Trade Agreement ('FTA') on 6 October 2010 ('EU-Korea FTA') that is designed to have unlimited duration.<sup>1</sup> This preferential trade agreement entered provisionally into force on 1 July 2011. Before the conclusion of the EU-Korea FTA, the EU had already signed several preferential trade agreements covering climate change *per se*. Their climate change provisions have fallen under an environmental protection heading, an energy heading or a combination of both, and have been accompanied by a dispute settlement mechanism ranging from a mere consultation procedure to arbitration proceedings.

Despite the EU-Korea FTA being presented as embodying a novel type of FTA by reason of its comprehensive nature,<sup>2</sup> its direct climate change provisions still enjoy a low degree of normativity in soft law/hard law continuum due to their generality, looseness and conditional language, and given that their dispute settlement mechanism entails no judicial process and is limited to consultations and mediation. The soft law nature of the FTA's direct climate change provisions stands in contrast with the higher degree of normativity attached to its indirect climate change provisions: (i) provisions on tariff schedules and the elimination of customs duties in import of goods; (ii) specific energy services commitments; (iii) general exceptions to the liberalization of trade in goods; (iv) general exceptions to trade in services, freedom of establishment and electronic commerce; (v) technical barriers to trade; and (vi) transparency standards and national procedural guarantees. The low level of normativity attached to the EU-Korea FTA's direct climate change provisions is also counterbalanced by the medium level of normativity characterizing the Framework Agreement for Trade and Cooperation between the EU and its Member States and South Korea of 10 May 2010 ('2010 Cooperation Agreement') that is not yet in force.<sup>3</sup> In short, the climate change relations between the EU and the Republic of Korea are tainted by different levels of normativity that revolve around the precision of their contractual arrangements and the judicialization of their dispute settlement mechanism.

These different levels of normativity in the soft law/hard law scale will influence the way in which the EU-Korea FTA's direct climate change provisions, its indirect climate change provisions and the 2010 Cooperation Agreement normatively interact. The FTA's direct and indirect climate change provisions as well as the 2010 Cooperation Agreement have regulated climate change at different functional levels: (i) by setting the ground for a general policy framework; (ii) by treating climate change as an integral part of trade in goods, trade in services and freedom of establishment, in other words, as the object of international trade; (iii) by treating climate change as a ground for legitimizing restrictions on international trade, whether on the import of goods, on trade in services or as a technical barrier to trade ('TBT'); and finally (iv) as a trigger of good governance and good administrative standards in the Contracting Parties' respective laws, including therefore in their adoption and

enforcement of climate change legislation. The EU-Korea FTA's Chapter 13 produces various spillover effects on the FTA's indirect climate change provisions by informing the interpretation of those environmental goods that enjoy tariff concessions and of energy services commitments, shedding light on the meaning attached to derogations grounds from liberalization of trade in goods or services or from freedom of establishment and/or by triggering good governance and good administrative standards in areas of climate change governance. The 2010 Cooperation Agreement, once in force, may in turn produce the same spillover effects on the EU-Korea FTA's indirect climate change provisions as Chapter 13 thereof. Regarding the normative relation between Chapter 13 and the 2010 Cooperation Agreement's climate change provisions, the latter could end up absorbing the substance of Chapter 13's direct climate change provisions by subjecting their underlying policy-oriented norms to a partly judicialized dispute settlement mechanism. In other words, given the overlapping nature of Chapter 13's and the 2010 Cooperation Agreement's substantive climate change provisions and the higher level of detail enjoyed by the latter provisions, the former provisions may lose their normative identity and be governed in part by the Cooperation Agreement's arbitral procedure.

In a first stage, the paper will describe the legal and policy context within which environmental and climate change provisions have permeated the EU-Korea FTA (Section II). In a second stage, the paper will point to the main differences between hard and soft law under legal theory (Section III). In a third stage stage, the soft law nature of the EU Korea FTA's direct climate change provisions will be discussed (Section IV). In a fourth stage, the hard law characteristics of the FTA's indirect climate change provisions will be elaborated upon as well as Chapter 13's spillover effects thereupon (Section V). In a fifth stage, the medium level of normativity attached to the 2010 Cooperation Agreement's climate change provisions and their spillover effect upon the FTA's direct and indirect climate change provisions will be described (Section VI). In a sixth stage, the implications of these various levels of normativity will be unfolded in more detail (Section VII).

## **2. CONTEXT WITHIN WHICH CLIMATE CHANGE CONCERNS PERMEATED THE EU-KOREA FTA**

In its 2006 renewed EU Sustainable Development Strategy, the Council of the EU insisted on the need for the European Commission ('Commission') and EU Member States to increase efforts to use international trade as a means towards pursuing 'genuine global sustainable development'.<sup>4</sup> The Council encouraged the EU to make environmental standards more ambitious when concluding regional and bilateral trade or cooperation agreements with non-EU countries.<sup>5</sup>

In its Communication entitled 'Global Europe: Competing in the World' ('Global Europe Communication'), the Commission, whilst confirming its commitment to multilateral trade negotiations, also conveyed its interest in furthering international trade rules by addressing policy issues that are not yet conducive to multilateral negotiations (e.g., investment, public procurement, competition).<sup>6</sup> The Commission insisted on the fact that, in order to be successful, FTAs had to be comprehensive in their scope, cover disciplines other than those already regulated by the WTO Agreements and call for the liberalization of substantially all trade in goods and services.<sup>7</sup> For the Commission, 'new competitiveness-driven FTAs would need to be comprehensive and

ambitious in coverage, aiming at the highest possible degree of trade liberalisation including far-reaching liberalisation of services and investment'.<sup>8</sup> The Commission announced that bilateral trade relations had to better reflect concerns for sustainable development, for instance, through the incorporation of 'new co-operative provisions in areas relating to labour standards and environmental protection'.<sup>9</sup> The Commission pointed to ASEAN, Korea and Mercosur as priority trade partners due to not just their market potential but also their ongoing FTA negotiation with EU's main competitors.<sup>10</sup> In an Annex to the 'Global Europe Communication', the Commission also argued that '[t]rade in environmentally friendly products should be encouraged and the EU should promote the use of best available technologies both in bilateral and multilateral trade agreements'.<sup>11</sup>

Previous preferential trade agreements (e.g., customs unions, FTAs and hybrid forms of FTAs) concluded by the EU before the signature of the EU-Korea FTA have already expressly covered climate change topics such as those concerned with renewable energy, energy efficiency or the implementation of the Kyoto Protocol (Macedonia; Montenegro; Bosnia Herzegovina; Mexico, Chile; Morocco; Algeria; Tunisia; Egypt; South Africa; Palestinian Authority; Jordan; Israel and Caribbean States) under their environmental protection clause and/or energy cooperation clause(s).<sup>12</sup> Additionally, EU's customs unions with San Marino, the European Economic Area and the preferential trade agreement which the EU concluded with Albania contain a heading dedicated to environmental protection and energy cooperation without expressly alluding to climate change or one of its pillars.<sup>13</sup> Amongst the pre-existing preferential trade agreements concluded by the EU before the signature of the EU-Korea FTA and which contain express climate change provisions, an important number of them confer upon any Contracting Party the unilateral right to launch arbitration proceedings in case of dispute over the interpretation and/or application of the agreement's climate change provisions. These arbitration clauses have concerned preferential trade agreements concluded by the EU with Israel, Jordan, the Palestinian Authority, South Africa, Egypt, Tunisia, Algeria, Morocco, Chile, and the CARIFORUM States.<sup>14</sup> Therefore, the EU-Korea FTA is not novel as regards the consideration of climate change and environmental concerns.

The EU-Korea FTA is ambitious in its scope by covering the following chapters: (i) Objectives and General Definitions; (ii) National Treatment and Market Access for Goods; (iii) Trade Remedies; (iv) Technical Barriers to Trade; (v) Sanitary and Phytosanitary Measures; (vi) Customs and Trade Facilitation; (vii) Trade in Services, Establishment and Electronic Commerce; (viii) Payments and Capital Movements; (ix) Government Procurement; (x) Intellectual Property; (xi) Competition; (xii) Transparency; (xiii) Trade and Sustainable Development; (xiv) Dispute Settlement; and (xv) Institutional, General and Final Provisions.

### **3. HARD LAW VERSUS SOFT LAW**

It is helpful to briefly look at the main doctrinal definitions of soft and hard law in legal theory with a view to informing the different levels of normativity of the climate change framework prevailing in the bilateral relations between the EU and the Republic of Korea. Jan Klabbers argued that soft law refers to acts intended to 'influence behavior, but without creating law'.<sup>15</sup> For Christine Chinkin, soft law covers three categories of norms: (i) non-binding resolutions endorsed by international organizations (referred to as 'non legal soft law'); (ii)

international treaties composed of soft obligations (referred to as 'legal soft law'); and (iii) statements laying down international law principles and issued by individuals acting in a private capacity.<sup>16</sup> Therefore the softness of the norm can derive from either the form of its instrument or its core content.<sup>17</sup> Chinkin also took the position that, if an international treaty merely referred to the 'gradual acquiring of standards' or to 'general goals and programmed action', it would have to be treated as soft law.<sup>18</sup> Chinkin concluded that soft law norms are not naturally conducive to an adjudicatory dispute settlement: they lend themselves better to non-judicial forms of dispute settlement and to 'self-regulation between interested participants'.<sup>19</sup> Oana Stefan defined soft law by reference to the absence of legally binding force and to its insistence on persuasion in lieu of 'enforcement by a coercive authority'.<sup>20</sup> Jacob Gersen and Eric Posner defined soft law as a set of norms that impact upon agents' behavior without enjoying the status of 'formal law'.<sup>21</sup> Ellis Ferran and Kern Alexander viewed soft law as standards and statements which are apt to significantly influence States and private parties' behavior whilst not being directly binding and enforceable due to 'formal techniques of international law'.<sup>22</sup> Both authors agreed that soft law norms tend to be 'open-textured' and 'loosely worded' whilst also aware that some soft law norms embody technical standards that are fairly detailed in their content. Francis Snyder defined soft law as 'rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effects'.<sup>23</sup> Kenneth Abbott and Duncan Snidal distinguished between hard and soft law norms not as part of a binary opposition but within a continuum.<sup>24</sup> The degree of softness and of hardness of a particular norm will hinge on the application of three benchmarks: (i) the level of legal obligation (the binding nature of the obligation); (ii) the level of precision of the obligation (looseness versus specificity); and (iii) the level of delegation to a third party (in terms of enforcement or dispute settlement mechanism).<sup>25</sup> Both authors see in 'hortatory rules' a typical illustration of rules enjoying a low degree of precision and of delegation whilst at the same time embodying general standards that may be used as benchmarks for assessing behavioral practices.<sup>26</sup> They associate a high degree of delegation with rules involving judicial and arbitral institutions and a low degree of delegation with rules whose dispute settlement body involves political institutions.<sup>27</sup> Similarly, Alan Boyle referred to three meanings of soft law that gravitate towards the form of a legal instrument, its substantive content and the dispute settlement accompanying it.<sup>28</sup> Drawing upon Kenneth Abbott, Duncan Snidal and Alan Boyle, the following key criteria will be relied upon in order to underlie different levels of softness and hardness of EU-Korea FTA's provisions concerned with climate change: (i) degree of precision; and (iii) degree of judicialization of the accompanying dispute settlement body. The first benchmark is three-dimensional and is informed by three principal criteria: clarity, detailed nature and self-sufficiency. The second benchmark points to the extent to which the dispute settlement body enjoys independence in addressing a dispute over the interpretation and/or application of a rule.

#### **4. EU-KOREA FTA'S DIRECT CLIMATE CHANGE PROVISIONS**

The EU-Korea FTA's direct climate change provisions are fairly general and loose due to their reliance on pre-existing international environmental law and the need for further cooperative arrangements. Their dispute settlement mechanism is furthermore political by nature, and devolves little independence upon the actors

involved in Chapter 13 consultation and mediation procedures. Chapter 13, contrary to Chapter 14, calls for a 'dejudicialization' of the dispute settlement process. Therefore, Chapter 13, when read in isolation from the other chapters of the FTA, enjoys a low level of normativity: it is of a soft law nature with regard to both the degree of precision and the enforceability of its substantive provisions. Having said that, this low level of normativity is counterbalanced by the higher degree of normativity attached to the trade-related provisions and transparency standards that are informed by or triggered by Chapter 13's direct climate change provisions.

#### **4.1 SUBSTANTIVE PROVISIONS**

In the EU-Korea FTA, the contribution to sustainable development in the course of international trade has been presented as an objective of the FTA.<sup>29</sup> Article 1(1) of the FTA adds that the parties shall 'strive to ensure that this objective is integrated and reflected at every level of the Parties' trade relationship'. This may mean that the trade-related provisions of the EU-Korea FTA need be interpreted in the most environmentally and climate change-friendly way in case they pave the way for multiple interpretations.

In Chapter 13 on 'Trade and Sustainable Development', the parties acknowledge the interdependency of economic development, social development and environmental protection.<sup>30</sup> Additionally, Chapter 13 contains a provision whose heading is entitled 'Multilateral environmental agreements'.<sup>31</sup>

Under Chapter 13, the Contracting Parties 'reaffirm their commitment to reaching the ultimate objective of the United Nations Framework Convention on Climate Change ['UNFCC'] and its Kyoto Protocol'.<sup>32</sup> This 'ultimate objective' consists in the 'stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system'.<sup>33</sup> This objective should be reached 'within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner'.<sup>34</sup> Does the reference to the Kyoto Protocol<sup>35</sup> mean that the Republic of Korea, albeit a non-Annex I party to the UNFCC, would as a result become bound by those general obligations placed upon Annex I parties and designed to promote sustainable development (e.g., reinforcement of energy efficiency in critical areas of the parties' national economy; promotion of 'sustainable forms of agriculture'; reduction of methane emissions; progressive diminution or elimination of market imperfections, subsidies and tax incentives in GHG emitting sectors that would be detrimental to the UNFCC's ultimate objective)? Article 13.5(3) of the EU-Korea FTA does not have the effect of making the Republic of Korea an Annex I party through a regional agreement given that it uses the verb 'reaffirm': had it produced a new international environmental obligation, the FTA would have used the verb 'affirm' or 'state'. This is confirmed by the reference in the Kyoto Protocol's preamble to Article 2 of the UNFCC as the ultimate objective to be achieved by all parties to the UNFCC and the Kyoto Protocol. This is not to say that 13.5(3) of the EU-Korea FTA is redundant: it does have the effect of incorporating into a regional agreement equipped with its own dispute settlement mechanism (political by nature) a pre-existing multilateral environmental obligation.

The Contracting Parties also agree on 'cooperating on the development of the future international climate change framework in accordance with the Bali Action Plan'.<sup>36</sup> Annex 13 to the EU-Korea FTA specifies



that such cooperation should cover 'issues relating to global carbon markets, ways to address adverse effects of trade on climate, as well as means to promote low-carbon technologies and energy efficiency'.<sup>37</sup> The reference to the Bali Action Plan is a way for the Contracting Parties to reaffirm at a regional level their multilateral commitment to 'long-term cooperative action' extending beyond 2012 and premised on at least five parameters: (i) the need for a 'long-term cooperative action' for emissions reduction; (ii) reinforced action on climate change mitigation at the national and international levels; (iii) reinforced adaptation action; (iv) reinforced action on technology development and transfer in order to create a support basis for mitigation and adaptation actions; and (v) increase in the provision of financial resources and of investment so as to support mitigation and adaptation actions and technology cooperation.<sup>38</sup>

Article 13(1)(3) of the EU-Korea FTA clarifies that the Agreement places no obligation upon the two parties to harmonize their environmental standards. This is a clear sign that the Contracting Parties did not wish to turn environmental cooperation into regulatory or legislative harmonization.

The Contracting Parties must also 'strengthen their trade relations and cooperation in ways that promote sustainable development'.<sup>39</sup> This obligation constitutes an extrapolation from Article 1(1) objective described earlier in this subsection.

Each Contracting Party, whilst reserving its power to set its own level of environmental and labor protection and to 'adopt or modify accordingly its relevant laws and policies', must 'seek to ensure that those laws and policies provide for and encourage high levels of environmental and labour protection (...)'.<sup>40</sup>

In no way, can the adoption of environmental standards serve any protectionist trade purpose.<sup>41</sup> Put it differently, the invocation of environmental standards in the face of trade-related provisions must be genuine.

Finally, the Contracting Parties must seek to 'facilitate and promote trade and foreign direct investment in environmental goods and services, including environmental technologies, sustainable renewable energy, energy efficient products and services and eco-labelled goods, including through addressing related non-tariff barriers'.<sup>42</sup> This provision suggests that climate change matters act not just a constraint on international trade but also as an object of international trade.

#### **4.2 DISPUTE SETTLEMENT MECHANISM**

The EU-Korea FTA provides for the creation of a specialized Committee on Trade and Sustainable Development composed of senior officials of the parties' respective administrations.<sup>43</sup> This body is designed to oversee the implementation of Chapter 13.<sup>44</sup>

In addition, the parties to the FTA are required to each establish a Domestic Advisory Group on sustainable development composed of independent representatives of civil society, in particular representing environmental, labor and business organizations. These bodies are to advise on the implementation of Chapter 13 at the national level.<sup>45</sup> Members of these bodies are also expected to meet on a yearly basis at the Civil Society Forum with a view to engaging in a dialogue on the aspects of the parties' trade relations concerned with sustainable development.<sup>46</sup>

Chapter 14, including its arbitration procedure, is not applicable to Chapter 13, which instead is



regulated by a *sui generis* two-fold procedure.<sup>47</sup> In a first stage, in the event of a dispute over the implementation of this Chapter 13, the complaining party is required to seek government consultations with the other party via the latter's contact point. The parties are to endeavor to promptly reach a mutually satisfactory resolution of the dispute in line with the activities of multilateral international organizations. If they find it to be appropriate, the parties are also free to request an opinion from these international organizations. The Committee on Trade and Sustainable Development may also intervene at the parties' request if they deem the dispute to require further discussion, in which case the Committee may attempt to resolve the dispute itself with the advice of the Domestic Advisory Group(s).<sup>48</sup> If the government consultations do not reach a satisfactory resolution and provided that the contending parties have not decided otherwise, any party to the dispute may request the establishment of a Panel of Experts within 90 days following the delivery of the original request for consultations. The experts on the Panel must be independent of the parties and of the organizations represented in the Domestic Advisory Groups, and be selected by each party from a list of 15 persons enjoying expertise in trade and sustainable development. The Panel shall receive submissions from the parties and may request additional advice and information from the parties, the Domestic Advisory Groups and/or international organizations. The Panel has 90 days from the date of selection of the last expert to present a report to the parties. Noteworthy is the absence of formal requirement to comply with the Panel's report: the parties must simply endeavor to 'accommodate' the Panel's advice or recommendations. Nevertheless, the Committee on Trade and Sustainable Development is tasked with monitoring the implementation of the Panel's recommendations.<sup>49</sup>

The dispute settlement mechanism applicable to the EU-Korea FTA's climate change framework ranges from a negotiation phase (dialogue and consultation between the parties as facilitated by consultative and advisory bodies) to a mediation phase whereby a third party ('the mediator') in a non-formal setting puts forward to the disputants new proposals intended to achieve a compromise solution after relying on the parties' respective information and thus without conducting an independent investigation.<sup>50</sup> The only difference with a classic form of mediation is that the disputants, in the context of the EU-Korea FTA, must give due consideration to the mediator's proposals and are thus not free to just dismiss them right at the outset. This dispute settlement mechanism therefore generates a low form of delegation to a third party entrusted with the task of facilitating dispute resolution by the parties but not of settling it in last resort: the parties are always free to depart from the Panel's advice or recommendations. Chapter 13 dispute settlement mechanism may be said to reflect what Jan Klabbers qualifies as 'an overtly political mode of dealing with conflicts',<sup>51</sup> albeit constrained by some formal procedures.

#### 4.3 PRELIMINARY ASSESSMENT

These clauses therefore appear to embody *rendez-vous*, *renvoi* and standstill obligations. The first type of clauses call for more climate change commitments between the parties both bilaterally and multilaterally. The EU-Korea FTA's climate change provisions may in this respect have the effect of 'creating expectations concerning matters which must be taken into account in good faith in the negotiation of further instruments'.<sup>52</sup> The second type of clauses urge the parties to live up to their pre-existing multilateral climate change

commitments. The third type of clauses, by aiming for a high level of environmental protection, prohibit the parties to the Agreement from reverting back to less demanding environmental norms.

By using exhortatory and aspirational language in Chapter 13 of the EU-Korea FTA's climate change provisions, the Contracting Parties have conceded to the softness of their climate change framework, which is tainted by its open-endedness, looseness, high degree of flexibility and lack of precise direction. This is in line with EU's past preferential trade agreements that regulate climate change under an energy or environmental heading.<sup>53</sup> The low level of precision attached to Chapter 13's climate change clauses also transpires from their lack of self-sufficiency: they call for more cooperation at the bilateral, international and multilateral level and thus for further implementation measures that will require the use of discretionary powers. Their specific dispute settlement mechanism is highly political by nature, which reinforces their soft law nature: any dispute over the interpretation and/or application of Chapter 13 is subject not to the arbitral procedure but instead to a consultation and ultimately a form of mediation procedure.

## **5. EU-KOREA FTA'S INDIRECT CLIMATE CHANGE PROVISIONS**

The FTA's indirect climate change provisions diverge from Chapter 13 climate change provisions in that the former, whilst not specifically concerned with it, govern climate change as an object of international trade, as a restriction on international trade or as a trigger of good governance and good administrative standards due to the generality of their terms. These indirect climate change provisions also diverge from the direct climate change provisions in that they are subject to the FTA's default dispute settlement mechanism that entails the use of an arbitration procedure.

### **5.1 SUBSTANTIVE PROVISIONS**

The EU-Korea FTA's indirect climate change provisions refer to the following types of clauses: (i) provisions on tariff schedules and the elimination of customs duties in import of goods; (ii) specific energy services commitments; (iii) general exceptions to the liberalization of trade in goods; (iv) general exceptions to trade in services, freedom of establishment and electronic commerce; (v) TBTs; and (vi) transparency standards and national procedural guarantees.

#### **1. Tariff schedules and elimination of customs duties on import of goods**

As far as the elimination of customs duties is concerned, the Contracting Parties are required to reduce or remove customs duties on goods originating from the other party in compliance with their respective 'tariff schedules'.<sup>54</sup> EU's and South Korea's respective tariff schedules cover a certain number of environmental goods that integrate or apply renewable energy technologies (e.g., solar collectors or photovoltaic cells) or that may be used as a materials for generating renewable energy (e.g., tallow, residues and waste).<sup>55</sup>

Chapter 13's spillover effect on Article 2.5(1) and the Contracting Parties' Tariff Schedules is to encourage the widest possible interpretation attaching to these tariff concessions when they are targeted at environmental goods. Climate change is hereunder regulated as an object of international trade in goods.

## 2. Commitments with respect to energy services

Annex 7-A-1, which contains EU's List of Commitments on Cross-Border Supply of Services in Conformity with Article 7.7 of the EU-Korea FTA, covers '[w]holesale trade services of solid, liquid and gaseous fuels and related products' and 'wholesale trade services of electricity, steam and hot water' amongst other commitments for energy services.<sup>56</sup>

Chapter 13's spillover effect on Article 7.7 and Annex 7-A-1 is to call for an interpretation of these energy services commitments as covering renewable energy services and not merely conventional energy sources. Climate change is hereunder regulated as an object of international trade in services.

## 3. General exceptions to liberalization of trade in goods

Chapter 2 of the EU-Korea FTA incorporates Article XX of the General Agreement on Tariffs and Trade ('GATT 1994') by renvoi when recognizing the Contracting Parties' power to provide for specific exceptions to the liberalization of trade in goods.<sup>57</sup> Article XX of GATT 1994 stipulates that such exceptions need be 'necessary to protect human, animal or plant life or health' or to relate to 'the conservation of exhaustible natural resources', and may not be applied in a way that would constitute 'a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade' ('Article XX chapeau').<sup>58</sup>

Article XX inevitably raises the question of which proportionality test ought to shape the justificatory methodology in case of *prima facie* breach of a GATT's substantive provision. Proportionality broadly understood comprises three successive and cumulative steps: suitability, necessity and proportionality *stricto sensu* ('strict proportionality' or 'balancing').<sup>59</sup> The suitability test requires that those means not effective enough for pursuing the legitimate objective bearing in mind the factual possibilities of the case be disregarded.<sup>60</sup> Suitability is designed to rule out those measures that are blatantly irrelevant to achieving the competing value.<sup>61</sup> The necessity test requires that, between several equally suitable measures for achieving the legitimate objective, the one which limits least the exercise of a right be adopted by the public authority.<sup>62</sup> The necessity test together with the suitability test do not imply weighing competing values against one another but instead imply relating the means (i.e., the interfering measure) to the end (i.e., the legitimate objective).<sup>63</sup> They form part of the means-test.<sup>64</sup> Strict proportionality implies carrying out a 'cost-benefit analysis' by comparing the competing values themselves.<sup>65</sup> In that respect, it constitutes a normative test.<sup>66</sup> It asks whether the interference with a right entails 'a net gain' when balancing the degree of non-satisfaction of a right with the degree of satisfaction of the legitimate objective.<sup>67</sup> Strict proportionality involves two 'laws of balancing'. The first one implies a positive correspondence between the intensity of the public interference with a right and the compelling nature of the legitimate objective advanced by the Contracting Party.<sup>68</sup> The second one implies that the more important a public interference with a right is, the more convincing its foundational proposition must be.<sup>69</sup> This second 'law of balancing' in turn affects the required degree of judicial review of the empirical basis underpinning the interference.<sup>70</sup>

The WTO Appellate Body has taken the position that the expression 'necessary to protect human, animal or plant life or health' raises the question of whether the Respondent Party to a dispute could not have opted for a less trade-restrictive measure that was reasonably available to it at the time of adoption of the contested measure.<sup>71</sup> This embodies a necessity test, in other words, the second prong of the broad proportionality analysis. A measure which is impossible to implement would not be deemed to be reasonably available to the respondent party whilst mere administrative difficulties in implementing an alternative measure would not preclude it from being considered reasonable.<sup>72</sup> The Appellate Body has also ruled that the more compelling a public interest objective is, the easier the reasonable alternative measure threshold will be met, thereby introducing a balancing element into the necessity test.<sup>73</sup> The term 'necessary' must be read within a continuum the opposite ends being 'making a contribution to' and 'indispensable' whilst being much nearer the latter end than the former.<sup>74</sup>

As for the exception based on the need for the public interest measure to relate to 'the conservation of exhaustible natural resources', the WTO Appellate Body has suggested that the term 'relate' connotes a lower justificatory threshold than the term 'necessary' and asks whether the contested measure was 'primarily aimed at' the achievement of this environmental objective.<sup>75</sup> This seems to reduce the proportionality test to a stringent form of 'suitability' requirement.

With respect to the Article XX chapeau, the Appellate Body has ruled that the criteria of 'arbitrary or unjustifiable discrimination' and of 'disguised restriction on international trade' are designed to prevent the 'abuse or illegitimate use of the exceptions to substantive rules available in Article XX'.<sup>76</sup> In the *Shrimp-Turtles* case, the WTO Appellate Body unfolded the general rationale lying behind Article XX, which calls for a case-by-case assessment of the underlying conflict of values:

The task of interpreting and applying the chapeau is, hence, essentially the delicate one of locating and marking out a line of equilibrium between the right of a Member to invoke an exception under Article XX and the rights of the other Members under varying substantive provisions (...) of the GATT 1994, so that neither of the competing rights will cancel out the other and thereby distort and nullify or impair the balance of rights and obligations constructed by the Members themselves in that Agreement. The location of the line of equilibrium, as expressed in the chapeau, is not fixed and unchanging: the line moves as the kind and the shape of the measures at stake vary and as the facts making up specific cases differ.<sup>77</sup>

It must be agreed with Joanne Scott that, in assessing Article XX chapeau in the *Gasoline* case, the Appellate Body has also applied elements of the necessity or a less-restrictive-means test after having found that the baseline establishment rules of the Gasoline Rule were primarily aimed at 'the conservation of exhaustible natural resources'.<sup>78</sup>

It is worth pointing out that, under the EU-Korea FTA, any Contracting Party wishing to make use of these exceptions must appropriately inform the other Contracting Party in order to reach a mutually acceptable solution.<sup>79</sup> Only when 'exceptional and critical circumstances' make this prior notice infeasible, may the Contracting Party inform the other only after having adopted such a measure.<sup>80</sup> This procedural obligation represents an addition compared to Article XX of the GATT 1994.

The spillover effect of the FTA's direct climate change clauses on its trade-related provisions may be that any climate change matter is presumed to constitute a legitimate objective aimed at the protection of human, animal/plant life or of health or the conservation of exhaustible natural resources for the purpose of Article XX of the GATT 1994 by reading Article 2.15(1) of the EU-Korea FTA consistently with Chapter 13 thereof.

#### **4. Technical Barriers to Trade**

Certain measures regulating renewable energy and energy efficiency may be labeled 'technical regulations' and need to pass the proportionality test under the WTO Agreement on Trade Barriers to Trade ('TBT Agreement') since the latter is incorporated into Chapter 4 of the EU-Korea FTA by *renvoi*.<sup>81</sup> Under the TBT Agreement, technical regulations may not be intended to or have the effect of entailing 'unnecessary obstacles to international trade': they may be 'not be more trade restrictive than necessary to fulfil a legitimate objective, taking into account the risk non-fulfilment would create'.<sup>82</sup> Article 2.2. of the TBT Agreement, contrary to Article XX GATT, does not list public interest grounds which the technical regulations need to pursue in order to be justified. This provision appears to be an illustration of the necessity test unaccompanied by any suitability or balancing requirement.<sup>83</sup> Compared to Article XX GATT exceptions, Article 2.2. of the TBT Agreement embodies a justificatory test that 'moves the WTO beyond a discrimination based approach to the free movement of goods'.<sup>84</sup> Chapter 4 of the EU-Korea FTA lays down a series of cooperation obligations in the area of technical regulations so as to facilitate private operators' access to the Contracting Parties' respective markets.<sup>85</sup>

The spillover effect of the FTA's direct climate change provisions on Chapter 4 is that any climate change matter may implicitly be presumed to constitute a legitimate objective for the purpose of the TBT Agreement.

#### **5. General exceptions to trade in services, establishment and electronic commerce**

Chapter 7 of the EU-Korea FTA empowers the Contracting Parties to adopt measures derogating from its rules on 'trade in services, establishment and electronic commerce' provided that such derogatory measures are 'necessary' to protect human, animal/plant life or of health or 'relate to' the conservation of exhaustible natural resources, and are not be applied in a way that would constitute 'a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on establishment or cross-border supply of services'.<sup>86</sup>

The FTA's direct climate change provisions thus have a spillover effect on its provisions on trade in services and freedom of establishment since climate change action may implicitly be presumed to aim for the protection of human, animal/plant life or of health or to relate to the conservation of exhaustible natural resources under Article 7.50 of the EU-Korea FTA.

#### **6. Transparency standards and national procedural guarantees**

Chapter 12 on transparency is a chapter which, although not addressing climate change expressly, has some indirect repercussions by conferring upon individuals and private operators certain remedies in domestic courts and administrative bodies and by providing for good governance guarantees for all matters covered by the EU-Korea FTA. Chapter 12 provides for the following clauses:

- The right of review and of appeal before judicial or administrative courts/bodies;<sup>87</sup>

- Requirements concerned with the 'regulatory quality' of the Contracting Parties' internal laws;<sup>88</sup>
- Provisions on enquiries and entry points;<sup>89</sup>
- Recognition of the principle of non-discrimination in the application of transparency standards;<sup>90</sup>
- Requirements concerning the publication and accessibility of measures of general application;<sup>91</sup>
- Defence rights in administrative proceedings (e.g., opportunity for any interested party to present its views before closure of the administrative action).<sup>92</sup>

Chapter 12 provisions, although not specifically targeting climate change, may impact upon the practical functioning of South Korea's, EU's and EU Member States' climate change legal framework. In other words, by virtue of legislating in those fields of climate change that are covered by Chapter 13 of the EU-Korea FTA, the EU, its Member States and the Republic of Korea are bound to apply good governance/administrative practices and to ensure that private operators enjoy certain defence rights in administrative and judicial proceedings.

## **5.2 COMMON DISPUTE SETTLEMENT MECHANISM**

All EU-Korea FTA's indirect climate change provisions are subject to Chapter 14 default dispute settlement procedure.<sup>93</sup> Under this general dispute settlement procedure, the parties to a dispute over the interpretation and/or application of the Agreement must seek to resolve it through good faith consultations. This chapter regulates the time limit and the format for requesting the consultations, the determination of the consultation period and the location of these consultations.<sup>94</sup> In case the parties have not managed to resolve their dispute through good faith consultations and within the time frames set forth in Article 14(3) of the EU-Korea FTA, the complaining party is entitled to request unilaterally the establishment of an arbitration panel.<sup>95</sup> The complaining party must then notify the other party and the Trade Committee of the request for the establishment of an arbitration panel.<sup>96</sup> As a general rule, the parties must agree on the composition of the arbitration panel within 10 days from the date of submission of the request to the Trade Committee, failing which either party to the dispute may request the Chair of the Trade Committee to select by lot the three members thereof on the basis of a list of individuals proposed by the complaining party, a list of individuals proposed by the party complained against and a list of individuals agreed upon by both parties to become the chairperson of the arbitration panel.<sup>97</sup> Both parties to the dispute must adopt measures allowing them to comply in good faith with the panel ruling within a 'reasonable period of time' to be agreed upon by the parties.<sup>98</sup> Should they disagree with the compliance deadline, the complaining party may request the arbitration panel to set the 'reasonable period of time'.<sup>99</sup> Very importantly, the arbitration panel must seek to adopt its award by consensus, failing which it may adopt it by majority.<sup>100</sup> The arbitral award is binding upon the parties to the dispute, and may not confer any individual right(s) or obligation(s) upon natural or legal persons.<sup>101</sup>

## **5.3 PRELIMINARY ASSESSMENT**

A high level of precision may be assigned to the provisions on the reduction or removal of customs duties with respect to environmental goods that integrate or apply renewable energy technologies or that may be used as materials for generating renewable energy given their significant degree of clarity and self-sufficiency. The

principle of non-discrimination with respect to the energy services commitments also enjoys a high level of precision in that it is equally clear and self-sufficient. When climate change acts as a constraint on international trade in goods (*i.e.*, general exceptions to liberalization of trade in goods and Article XX GATT 1994; the application of the TBT provisions) or to trade in services, freedom of establishment and electronic commerce, the FTA's indirect climate change provisions enjoy a low level of precision due to the lack of detail and of self-sufficiency: the terms 'necessity' and 'relate' are not defined in the EU-Korea FTA even though their definition may be implicitly borrowed from the WTO Appellate Body's case-law and the TBT Agreement itself. Furthermore, the proportionality test to be applied as part of Article XX chapeau has not been laid down in the EU-Korea FTA, even though it already constitutes a source of legal uncertainty under WTO law. Finally, the TBT Agreement, which is incorporated by *renvoi* through Article 4.1 of the EU-Korea FTA, does not list the legitimate objectives that may restrict free movement of goods across the Contracting Parties' markets, and calls for further cooperation between the parties. Chapter 12 transparency and national procedural guarantees enjoy low to high levels of precision. The right of review and of appeal before judicial or administrative courts/bodies enjoys a low level of precision due to its lack of self-sufficiency: it presupposes the establishment of judicial or administrative appeals/bodies. The same can be said of the 'regulatory quality and performance' requirements, which call for cooperation between the parties in different ways, including through exchange of information. The provision concerned with enquiries and entry points presupposes the setting up of 'appropriate mechanisms' whose modalities are left to the Contracting Parties' discretion. That requirement is equally not self-sufficient absent any definition of these appropriate mechanisms, and thus enjoys a low level of precision. By contrast the following Chapter 12 guarantees are tainted by a high level of precision due to their inherent self-sufficiency and clarity: (i) non-discrimination in the application of transparency standards; (ii) publication and accessibility of measures of general application; and (iii) certain defence rights in administrative proceedings.

Chapter 14 dispute settlement mechanism hardens the normative force of the EU-Korea FTA's provisions due to its high degree of judicialization: it empowers the Contracting Parties to submit any dispute regarding the interpretation and/or application of the EU/Korea FTA to an arbitral panel after failure to reach a settlement in the course of good faith consultations.

The EU Korea FTA's indirect climate change provisions enjoy a medium or a high level of hard law normativity depending on whether the high degree of judicialization of their dispute settlement is also accompanied by a high level (*i.e.*, provisions on the reduction or removal of customs duties with respect to environmental goods; the principle of non-discrimination with respect to energy services commitments; specific Chapter 12 guarantees) or a low level of precision (*i.e.*, exceptions to liberalization of trade in goods; exceptions to liberalization of trade in services, freedom establishment and to electronic commerce; TBT provisions and certain Chapter 12 guarantees).

## **6. THE 2010 COOPERATION AGREEMENT'S CLIMATE CHANGE PROVISIONS**

The 2010 Cooperation Agreement was signed on 10 May 2010 but has not yet entered into force. The EU-Korea FTA and the 2010 Cooperation Agreement were meant to be institutionally and legally connected.<sup>102</sup> Although formally distinct treaties, the EU-Korea FTA need be interpreted in light of the object and purpose of the 2010 Cooperation Agreement due to the similar context within which both treaties were adopted and given that the former was signed a bit less than five months after the latter.

### **6.1 SUBSTANTIVE PROVISIONS**

The 2010 Cooperation Agreement contains an autonomous climate change heading and specific climate change provisions regulated through the Agreement's 'Transport', 'Energy' and 'Environment and Natural Resources' headings. Moreover, climate change has been turned into a basic cooperative objective of the Agreement. As a matter of general consideration, climate change has been listed as a global environmental challenge in the provision laying down the basis for cooperation between the parties.<sup>103</sup> Climate change action is also mentioned as an aim of cooperation in respect of sustainable development.<sup>104</sup>

Under its autonomous 'Climate Change' heading, the parties are required to 'intensify dialogue and cooperation at political, policy and technical levels'.<sup>105</sup> This climate change provision is without prejudice to developments taking place in such avenues as the UNCC and to their respective competences in this area of law. Their cooperative relation must be aimed at fighting climate change, promoting the efficient use of resources, exchanging know-how on trading schemes frameworks, improving public and private sector financing instruments that may support action against climate change, increasing collaboration on low-carbon technology research and at supporting developing countries' mitigation and action via the Kyoto Protocol Flexible Mechanisms.<sup>106</sup>

Under its 'Energy' heading, the 2010 Cooperation Agreement provides that the parties must endeavor to reinforce cooperation in the energy sector in such a way as to diversify energy supplies through the development of sustainable and renewable forms of energy (e.g., biofuels, biomass, wind and solar energy and hydro power generation) and promote energy efficiency in the production, transportation, distribution and final consumption of energy.<sup>107</sup>

Under the 'Transport' heading, the parties must endeavor to cooperate on the reduction of GHG emissions in this economic sector.<sup>108</sup> This could be seen as a reflection of the importance which the EU has attached to this sector for the purpose of promoting climate change.<sup>109</sup>

Using the 'Environment and Natural Resources' umbrella, the parties have emphasized their duty to endeavor to maintain and deepen their environmental protection cooperation, in particular with respect to 'climate change and energy efficiency'.<sup>110</sup>

The Cooperation Agreement may have the same spillover effects as the EU-Korea FTA's direct climate change provisions on its indirect climate change provisions. The Cooperation Agreement's climate change framework may also have the effect, once in force, of subsuming the climate change policy framework set by the



EU-Korea FTA's Chapter 13 since the former essentially mirrors the latter by substantiating it under various headings. This could mean that the substance of FTA's direct climate change provisions could indirectly benefit from the more judicial dispute settlement mechanism set up under the 2010 Cooperation Agreement.

## 6.2 DISPUTE SETTLEMENT MECHANISM

The 2010 Cooperation Agreement provides that, in case of divergence of positions in the interpretation or application of any of its provisions, either party must refer the dispute to the Joint Committee Joint Committee composed of representatives of the members of the Council of the European Union and of the European Commission, and of representatives of the Republic of Korea.<sup>111</sup> Whenever a party claims that the other party has breached its obligations, the former may adopt 'appropriate measures in accordance with international law' but only after the parties have sought to resolve their dispute through consultations within the Joint Committee, if applicable, with the assistance of a mediator.<sup>112</sup> This procedural requirement to seize the Joint Committee may be dispensed from in the event of 'special urgency',<sup>113</sup> in which case the complaining party must immediately notify the other party of the 'appropriate measure' it has adopted. The party upon which the countermeasure is being inflicted ('defaulting party') may then require that consultations be held for a 20-day period at the expiry of which the measure becomes enforceable.<sup>114</sup> The defaulting party is entitled to request the establishment of an arbitration procedure that would review the basis for or any other aspect of the said measure.<sup>115</sup> The arbitration tribunal is composed of three arbitrators: one appointed by each party and the third one by the Joint Committee. The parties to the dispute shall take the requisite steps to implement the arbitrators' decision.<sup>116</sup> As it transpires from the above, the intervention of the arbitral body may be triggered unilaterally only in case of dispute over the unilateral measures taken by the complaining party in response to an alleged breach by another party: the arbitral body has no jurisdiction over disputes regarding the interpretation and/or application of the Cooperation Agreement. The arbitral body, therefore, acts not as a primary adjudicator but instead as a secondary adjudicator that arbitrates disputes over the legality and proportionality of countermeasures.

## 6.3 PRELIMINARY ASSESSMENT

The 2010 Cooperation Agreement contains more extensive climate change policy provisions (understood here as international public interests) than those stemming from the EU-Korea FTA's Chapter 13 given the existence in the Cooperation Agreement of an autonomous climate change heading and of transport, energy and environmental protection headings that expressly regulate climate change from very specific angles. However, this level of detail is counterbalanced by the presence, as in the EU-Korea FTA's Chapter 13, of *rendez-vous* clauses (obligation of further cooperation), standstill clauses (need to aim for increased efforts for GHG reduction) and of *renvoi* clauses (reference back to international and multilateral environmental developments). The 2010 Cooperation Agreement's climate change provisions do not constitute self-standing obligations on the parties thereto. The level of precision of the Cooperation Agreement's climate change provisions is thus medium but not of a high level.

The dispute settlement mechanism accompanying the EU-Korea FTA (consultation obligation and establishment of a panel of experts) is less institutionalized and judicialized than that transpiring from the 2010 Cooperation Agreement given the intervention, by virtue of the latter Agreement, of an arbitral tribunal whose decision can be imposed on the parties to the dispute. However, this higher level of judicialization of the Cooperation Agreement's dispute settlement mechanism need not be exaggerated since the arbitral procedure only gets triggered in case of dispute over the unilateral measures taken by the complaining party in response to an alleged breach of another party but not in case of mere dispute over the interpretation and/or application of the Agreement. In the latter case, the dispute shall be resolved politically through the Contracting Parties' representatives within the Joint Committee. In other words, the arbitral procedure neither precludes nor conditions the adoption by one Contracting Party of countermeasures in response to alleged breaches of the Cooperation Agreement by another Contracting Party. The partial reach of the arbitration procedure points to a medium level of judicialization of the dispute settlement mechanism.

In short, the medium level of precision of its substantive climate change provisions combined with the partial judicialization of its dispute settlement mechanism make the Cooperation Agreement's climate change provisions of a medium level of hard law-making.

## 7. IMPLICATIONS OF THE VARIOUS LEVELS OF NORMATIVITY

The soft and hard law nature of the climate change provisions emerging from the EU-Korea FTA and the 2010 Cooperation Agreement have a bearing on the way in which these provisions may be enforced before South Korean, EU and domestic courts, in other words on the direct effect analysis. Direct effect hereunder refers to the aptitude of an international legal norm to be enforced before a court of another legal system.<sup>117</sup> The extensive meaning of direct effect has sometimes been referred to as the 'invocability' or 'justiciability' of a norm, and raises the question of whether the norm 'is addressed to the judiciary rather than the legislature'.<sup>118</sup> Under public international law, the question of whether an international legal norm produces direct effect, even if it can be inferred from the object, purpose and wording of the agreement, remains a matter to be ultimately decided by the party to the international agreement based on its monist, dualist or mixed tradition.<sup>119</sup> The EU Courts have recognized their competence to ascertain whether an international treaty concluded by the EU with a third country is directly effective, absent any express determination by its drafters regarding its internal legal effects.<sup>120</sup> They have ruled that for an EU secondary act to be subject to its validity review (e.g., annulment action or request for a preliminary invalidity ruling) in case a direct conflict between the EU measure and a provision of an international treaty, the nature and broad logic of the treaty must not preclude such a review (first direct effect criterion), and the content of the treaty provision invoked must be sufficiently precise (*i.e.*, second direct effect criterion) and unconditional (third direct effect criterion).<sup>121</sup> The GATT and WTO cases suggest that the nature of the treaty's dispute settlement mechanism may impinge upon the direct effect analysis,<sup>122</sup> even though in the *Air Transport Association of America* the Court of Justice was prepared to relax the importance of this factor when the dispute settlement mechanism relies on both a consultation/negotiation phase and an arbitral procedure.<sup>123</sup>

These requirements conditioning the direct effect of an international treaty need not be satisfied for an EU secondary act to be subject to the EU Courts' validity review when the secondary act is designed to implement an international treaty binding upon the EU ('implementation' exception) or when the former makes an express reference to the latter ('express reference' exception).<sup>124</sup> Regardless of whether the direct effect criteria are met, EU secondary law need be construed, to the maximum extent feasible, consistently with an international treaty that binds the Union.<sup>125</sup> This can be explained by the fact that the international treaty, by virtue of having been concluded by the EU, falls under EU primary law and, as such, prevails over inconsistent acts of EU secondary law.<sup>126</sup> In the case of mixed agreements falling under the shared competence of the Union and of its Member States, the EU Courts have attributed themselves the power to determine whether the agreement enjoys direct effect in Member States' national laws, including those provisions that fall under Member States' competence and thus not regulated by EU secondary law provided that the latter provisions concern a subject-matter significantly regulated by EU legislation.<sup>127</sup> Focus in this case-law has been on whether the treaty provisions were sufficiently precise and unconditional given the wording, purpose and nature of the treaty.<sup>128</sup>

Chapter 13's climate change clauses are likely not to be held direct effective before the EU and Member States' courts in light of the abovementioned direct effect criteria. As regards satisfaction of the first direct effect criterion, the fact that Chapter 13 is not subject to the arbitral procedure but rather to a political dispute settlement mechanism based on a consultation and a mediation procedure and that the Contracting Parties are not required to harmonize environmental standards may reflect the FTA drafters' intent to preclude any validity review action that could result in a declaration of invalidity of an EU measure found to be inconsistent with Chapter 13. As regards satisfaction of the second direct effect criterion, the reference to the trading parties' commitments to cooperate 'on the development of the future international climate change framework in accordance with the Bali Action Plan' and to achieve a high level of environmental protection is too unclear and ambiguous as to satisfy the precision requirement. As regards satisfaction of the third direct effect criterion, Chapter 13 provisions call for more cooperation at the bilateral, international and multilateral level and thus for further implementation measures that would involve discretionary policy choices. In *Demirel*, the ECJ indeed ruled that a Treaty provision containing a 'general obligation to cooperate in order to achieve the aims of the Agreement' is not apt to produce individual rights.<sup>129</sup> The absence of direct effect would indeed have the consequence that individuals and private entities would be precluded from invoking Chapter 13 provisions before the EU and Member States' domestic courts whether against an EU institution, a Member State or another private party. However, the EU Courts are prepared to review the validity of EU secondary acts against the background of international treaties that are not directly effective provided that the former expressly refer to or are designed to implement the latter. This could be the case if an EU Directive or Regulation made mention of the EU-Korea FTA in its preamble or if it could be inferred from a Commission's impact assessment report or proposal for a legislative act that the EU legal instrument purports to give effect to the EU-Korea FTA or its Chapter 13 climate change provisions. In any event, the EU Courts are still be required to interpret EU measures, as far as possible, in light of the EU Korea-FTA, since the latter has formed part of EU primary law by virtue of being concluded by the EU and having entered into force (at least provisionally).

As in the case of the EU-Korea FTA, the 2010 Cooperation Agreement's climate change provisions, when they enter into force, would not satisfy the requirement of sufficient precision and unconditionality in order to be directly effective before the EU and Member States' domestic courts: their language is too loose and leave much discretion to the Contracting Parties for further decision-making in the climate change area. This need for subsequent implementation measures can, in particular, be inferred from the reference to the duty to endeavor to cooperate or to reinforce cooperation in a particular climate change pillar.

Given their sufficient degree of precision and unconditionality (see considerations under Section V on their higher degree of normativity), and that the broad logic and nature of the EU-Korea FTA does not prevent any validity review of EU secondary acts since Chapter 14 dispute settlement mechanism evidences the FTA drafters' intent to judicialize as much as possible those substantive provisions subject to this default arbitration procedure, the following provisions may be said to be directly effective and thus to be judicially enforceable before the EU and Member States' domestic courts:

- Article 2.5(1) and the Tariff Schedule of Korea and Tariff Schedule of the EU Party;
- The principle of non-discrimination found in Article 7.7 of the EU-Korea FTA;
- Specific Chapter 12 guarantees: (i) non-discrimination in the application of transparency standards; (ii) publication and accessibility of measures of general application; and (iii) certain defence rights in administrative proceedings.

The various levels of hard and soft law attached to EU-Korea FTA's climate change provisions also point to normative interactions between the FTA's direct climate change provisions, its indirect climate change provisions and the 2010 Cooperation Agreement. The general climate change policy framework set forth by the FTA's Chapter 13 and the 2010 Cooperation Agreement have the effect of informing the scope of the environmental goods regulated by the provisions on tariff schedules and the elimination of customs duties on the import of goods as well as the scope of the services that fall under specific energy services commitments and of legitimizing measures derogating from the provisions on the liberalization of trade in goods and of trade in services. They may also have the effect of triggering transparency standards and national procedural guarantees with respect to climate change objectives that are translated into South Korea's, EU's and Member States' respective legal systems. The low level of normativity attributed to the EU-Korea FTA's Chapter 13 and its absence of direct effect before EU and domestic courts should not conceal the overall coherency which it can project into the FTA as a whole insofar as the balance between the need to further international trade within a regional forum and the consideration of legitimate international public interests is concerned. Climate change action can be part of either the first or the second branch of the balance depending on its function as an object of international trade or a constraint on international trade.

## **8. CONCLUSION**

It is undeniable that the EU-Korea FTA's direct climate change provisions are formally binding upon the Republic of Korea, the EU and its Member States. In that respect, they form part of EU primary law. Its Chapter 13 reflects

a combination of *rendez-vous*, *renvoi* and standstill obligations constraining the parties to the treaty. These clauses, characterized by a low level of precision and inaptitude to produce direct effect before EU and Member States' courts, may still have the effect of informing the scope of the FTA's trade-related provisions or of triggering good governance practices.

Direct climate change provisions (*i.e.*, when they do not act as an object of or a constraint on international trade, or as a trigger of general good governance/administrative standards), are not vowed to remain of a soft law nature due to their insufficient degree of precision and low level of judicialization. An example of preferential trade agreement whose climate change provisions enjoy hard law characteristics by reason of their strong international dispute settlement mechanism is the Trade Agreement between the EU and its Member States and Colombia and Peru ('EU-Colombia/Peru FTA'), which is not yet in force.<sup>130</sup> This preferential trade agreement is characterized by the presence of provisions addressing climate change issues without structurally falling under an environmental or energy section or subsection (*i.e.*, autonomous climate change provisions). Although the agreement (like the EU-Korea FTA's Chapter 13) is loose in relation to its requirements to promote a particular climate change goal and to engage in further environmental cooperation, the EU-Colombia/Peru FTA nevertheless subjects its climate change framework to an arbitral procedure.<sup>131</sup> An international agreement binding upon the Union which has hard law characteristics based on the high level of precision (degree of clarity, detail and self-sufficiency) attached to several of its provisions and which may constitute a model for the drafting of future FTAs is the Aarhus Convention.<sup>132</sup> These prospective FTAs, premised on the Aarhus experience, would comprise specific provisions on access to climate change information, private participation in domestic climate change decision-making and access to justice in climate change matters, which could be turned into directly enforceable procedural and due process rights, at least for most of their modalities.<sup>133</sup> The Aarhus Convention has indeed been presented as a source of public rights, and intended to directly regulate the relationship between individual and private entities on the one hand and Governments on the other.<sup>134</sup> In other words, "[w]hereas most multilateral environmental agreements cover obligations that Parties have to each other, the Aarhus Convention covers obligations that Parties have to the public".<sup>135</sup>

Climate change provisions consisting in non-discrimination clauses or in stand-alone defence rights are likely to enjoy a high degree of normativity in future FTAs, especially if they are sanctioned by arbitral procedures covering disputes over their interpretation and/or application.

## Endnotes

---

\* Associate in EU Law at McKenna Long & Aldridge (member of the Brussels Bar); MJur, DPhil in Law (Oxon); MIA, LL.M. (Columbia University); BA, MA (Brussels Free University); email: [nicolas\\_croquet@yahoo.com](mailto:nicolas_croquet@yahoo.com) The author wishes to thank Giles Chappell (Trade and Green Economy Consultant at UNEP and dual-qualified England & Wales and New York lawyer) for his research assistance and editorial comments as well as Dr. Axel Marx for his very pertinent comments and suggestions.

<sup>1</sup> Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part [2011] OJ L127/6, art 15.11.

<sup>2</sup> Commission, 'Proposal for a Council Decision authorising the signature and provisional application of the Free Trade Agreement between the European Union and its Member States and the Republic of Korea' COM(2010) 136 final 3; Commission's DG Trade, 'The EU-Korea Free Trade Agreement in practice', Brussels 2011, 3, available at:

<[http://trade.ec.europa.eu/doclib/docs/2011/october/tradoc\\_148303.pdf](http://trade.ec.europa.eu/doclib/docs/2011/october/tradoc_148303.pdf)>; Der-Chin Horng, 'Reshaping the EU's FTA Policy in a Globalizing Economy: The Case of the EU-Korea FTA' (2012) 46/2 Journal of World Trade 301, 304.

<sup>3</sup> Framework Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, not yet in force, accessible at: <<http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&reatyId=8983>>

<sup>4</sup> Council of the EU, 'Review of the EU Sustainable Development Strategy – Renewed Strategy', Document 10117/06, 21, available at: <<http://register.consilium.europa.eu/pdf/en/06/st10/st10117.en06.pdf>>

<sup>5</sup> *ibid* 21.

<sup>6</sup> Commission, 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, "Global Europe: Competing in the World: A Contribution to the EU's Growth and Jobs Strategy" COM(2006) 567 final 8, available at: <[http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0567en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0567en01.pdf)>

<sup>7</sup> *ibid* 8.

<sup>8</sup> *ibid* 9.

<sup>9</sup> *ibid* 9.

<sup>10</sup> *ibid* 9.

<sup>11</sup> Commission, 'Commission Staff Working Document, Annex to the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Global Europe: Competing in the World – A Contribution to the EU's Growth and Jobs Strategy' SEC(2006) 1230, 25, available at: <[http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc\\_130370.pdf](http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130370.pdf)>

<sup>12</sup> Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, art 108; Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part [2000] OJ L276/45, art 23; Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part [2002] OJ L352/3, art 22(1) and 28(1); Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part [2000] OJ L70/2, art 57; Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part [2005] OJ L265/2, art 61; Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part [1998] OJ L97/2, art 57; Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part [2004] L304/39, art 53; Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part [1999] OJ L311/3, art 57 and 84(1); Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) of the other part [1997] OJ L187/3, art 48; Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part [2002] L129/3, art 74; Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part [2000] OJ L147/3, art 51(1); Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part [2008] OJ L289/3, art 138 and 183(5).

<sup>13</sup> Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino [2002] OJ L84/43, art 16; Agreement on the European Economic Area [1994] OJ L1/3, art 73; Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part [2009] OJ L107/166, art 107 and 108.

<sup>14</sup> Euro-Mediterranean Agreement establishing an association with the State of Israel (n 12) art 75; Euro-Mediterranean Agreement establishing an Association with Jordan (n 12) art 97; Euro-Mediterranean Interim Association Agreement on trade and cooperation with the Palestine Liberation Organization (n 12) art 67; Agreement on Trade, Development and Cooperation with South Africa (n 12) art 104; Euro-Mediterranean Agreement establishing an Association with Egypt (n 12) art 82; Euro-Mediterranean Agreement establishing an association with Tunisia (n 12) art 86; Euro-Mediterranean Agreement establishing an Association with Algeria (n 12) art 100; Euro-Mediterranean Agreement establishing an Association with Morocco (n 12) art 86; Agreement establishing an Association with Chile (n 12) art 184 through 189; Economic Partnership Agreement between the CARIFORUM States (n 12) art 202 through 223.

<sup>15</sup> Jan Klabbers, *An Introduction to International Institutional Law* (2nd edn, CUP 2009) 182.

<sup>16</sup> Christine Chinkin 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38 ICLQ 850, 851.

<sup>17</sup> *ibid* 851.

<sup>18</sup> *ibid* 851.

<sup>19</sup> *ibid* 862.

- <sup>20</sup> Oana Stefan, 'Hybridity before the Court: a Hard Look at Soft Law in the EU Competition and State Aid Case Law' (2012) 37 EL Rev 49, 50.
- <sup>21</sup> Jacob Gersen and Eric Posner, 'Soft Law: Lessons from Congressional Practice' (2008) 61/3 SLR 1, 3.
- <sup>22</sup> Ellis Ferran and Kern Alexander, 'Can Soft Law Bodies be Effective? The Special Case of the European Systemic Risk Board' (2010) 35 EL Rev 751, 754-755.
- <sup>23</sup> Francis Snyder, 'The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques' (1993) 56 MLR 19, 32.
- <sup>24</sup> Kenneth Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 54/3 International Organization 421, 422, 424.
- <sup>25</sup> *ibid* 424.
- <sup>26</sup> *ibid* 443.
- <sup>27</sup> *ibid* 432.
- <sup>28</sup> Alan Boyle, 'Some reflections on the relationship of treaties and soft law' (1999) 48 ICLQ 901, 902.
- <sup>29</sup> EU-Korea FTA (n 1) art 1.1(2).
- <sup>30</sup> *ibid* art 13.1(2).
- <sup>31</sup> *ibid* art 13.5.
- <sup>32</sup> *ibid* art 13.5(3).
- <sup>33</sup> United Nations Framework Convention on Climate Change, New York 9 May 1992, 1771 UNTS 107, 31 ILM 849 (1992), art 2.
- <sup>34</sup> *ibid* art 2.
- <sup>35</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change; UN Doc FCCC/CP/1997/7/Add.1, Dec. 10, 1997, 37 ILM 22 (1998), art 2.
- <sup>36</sup> EU-Korea FTA (n 1) art 13.5(3).
- <sup>37</sup> Annex 13 'Cooperation on Trade and Sustainable Development' [2011] OJ L127/1335, art 1(f).
- <sup>38</sup> Decision 1/CP.13 'Bali Action Plan', FCCC/CP/2007/6/Add. 1, 14 March 2008.
- <sup>39</sup> EU-Korea FTA (n 1) art 13.1(3).
- <sup>40</sup> *ibid* art 13.3.
- <sup>41</sup> *ibid* art 13.2(2).
- <sup>42</sup> *ibid* art 13.6(2).
- <sup>43</sup> *ibid* art 13.12.
- <sup>44</sup> *ibid* art 13.12(3).
- <sup>45</sup> *ibid* art 13.12(4)-(5).
- <sup>46</sup> *ibid* art 13.13.
- <sup>47</sup> *ibid* art 13.16.
- <sup>48</sup> *ibid* art 13.14.
- <sup>49</sup> *ibid* art 13.15.
- <sup>50</sup> Mediation and conciliation traditionally allow a third party to actively facilitate or restore the negotiation process, to provide an additional communication channel, to propose a solution to the parties, and, in the case of conciliation, to conduct an investigation or a detailed fact-finding mission independently of the parties' submissions: JG Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 26, 58; Lori Damrosch et al, *International Law: Cases and Materials* (Thomson Reuters 2009) 563-564; John Collier and Vaughan Lowe, *The Settlement of Disputes in International Law* (OUP 1999) 27.
- <sup>51</sup> Klabbbers *An Introduction to International Institutional Law* (n 16) 182.
- <sup>52</sup> Boyle (n 28) 908. Alan Boyle drew this conclusion in relation to Article 3 of the United Nations Framework Convention on Climate Change.
- <sup>53</sup> See Section II, fn 12 and Annexes I and II.
- <sup>54</sup> EU-Korea FTA (n 1) art 2.5(1).
- <sup>55</sup> Tariff Schedule of Korea and Tariff Schedule of the EU Party [2011] OJ L127/86-1123.
- <sup>56</sup> Annex 7-A-1 'EU's List of Commitments on Cross-Border Supply of Services in Conformity with Article 7.7' [2011] OJ L127/1194.
- <sup>57</sup> EU-Korea FTA (n 1) art 2.15(1).
- <sup>58</sup> General Agreement on Tariffs and Trade, 30 October 1947, 55 UNTS 194, art XX.
- <sup>59</sup> Robert Alexy, *A Theory of Constitutional Rights* (OUP 2001) 397-401.
- <sup>60</sup> *ibid* 397-401.
- <sup>61</sup> *ibid* xxxii.
- <sup>62</sup> *ibid* 397-401.
- <sup>63</sup> Julian Rivers, 'Proportionality, Discretion and the Second Law of Balancing' in George Pavlakos (ed), *Law, Rights and Discourse* (Hart Publishing 2007) 167, 171, 179.
- <sup>64</sup> *ibid*.
- <sup>65</sup> Julian Rivers, 'Proportionality and variable Intensity of Review' (2006) 65/1 CLJ 200.
- <sup>66</sup> *ibid* 200.



<sup>67</sup> *ibid* 180-181.

<sup>68</sup> Alexy (n 59) 418; Basak Çali, 'Balancing Human Rights? Methodological Problems with Weights, Scales and Proportions' (2007) 29(1) HRQ 251, 265.

<sup>69</sup> Alexy (n 59) 418.

<sup>70</sup> Rivers 'Proportionality, Discretion and the Second Law of Balancing' (n 63) 180, 187.

<sup>71</sup> *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, Report of the Appellate Body of 12 March 2001, WT/DS/135/AB/R, para 170.

<sup>72</sup> *ibid* paras 169-170.

<sup>73</sup> *ibid* para 172; *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, Report of the Appellate Body of 11 December 2000, WT/DS/161/AB/R, paras 163-164, 166.

<sup>74</sup> *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef* (n 73) para 161.

<sup>75</sup> *United States – Standards for Reformulated and Conventional Gasoline*, Report of the Appellate Body of 29 April 1996, WT/DS2/AB/R, 10-11.

<sup>76</sup> *ibid* 10-11.

<sup>77</sup> *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, Report of the Appellate Body of 12 October 1998, WT/DS58/AB/R, para 159.

<sup>78</sup> Joanne Scott, *EC Environmental Law* (Longman 1998) 100; *United States – Standards for Reformulated and Conventional Gasoline* (n 75) 13-17.

<sup>79</sup> EU-Korea FTA (n 1) art 2.15(2).

<sup>80</sup> *ibid* art 2.15(2).

<sup>81</sup> EU-Korea FTA (n 1) art 4.1.

<sup>82</sup> Agreement on Technical Barriers to Trade, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, Legal Instruments-Results of the Uruguay Round, 1868 UNTS 120 (1994), art 2.2.

<sup>83</sup> Massimiliano Montini however wrongly assigns the term 'necessity principle' to the legitimate objective test when in fact the latter test is a preliminary question to that of proportionality broadly understood: Massimiliano Montini, 'EC External Relations on Environmental Law' in Joanne Scott, *Environmental Protection: European Law and Governance* (OUP 2009) 127, 156.

<sup>84</sup> Joanne Scott, 'Mandatory or Imperative Requirements in the EU and the WTO' in Catherine Barnard and Joanne Scott (eds), *The Law of the Single European Market: Unpacking the Premises* (Hart Publishing 2002) 269, 287.

<sup>85</sup> EU-Korea FTA (n 1) art 4.3.

<sup>86</sup> *ibid* art 7.50(b)(c).

<sup>87</sup> *ibid* art 12.6.

<sup>88</sup> *ibid* art 12.7.

<sup>89</sup> *ibid* art 12.4.

<sup>90</sup> *ibid* art 12.8.

<sup>91</sup> *ibid* art 12.3.

<sup>92</sup> *ibid* art 12.5.

<sup>93</sup> The following parts of the EU Korea FTA are subject to Chapter 14's default dispute settlement mechanism: (i) 'National Treatment and Market Access for Goods' (Chapter 2); (ii) 'Trade Remedies' (Chapter 3) with the exception of the sections on global safeguard measures, anti-dumping and countervailing duties; (iii) 'Technical Barriers to Trade' (Chapter 4); (iv) 'Customs and Trade Facilitation' (Chapter 6) except for matters regulated by Article 9.1 of the Protocol on Mutual Administrative Assistance in Customs Matters ('[e]xceptions to the obligation to provide assistance'); (v) 'Trade in Services, Establishment and Electronic Commerce' (Chapter 7) with a few exceptions when disputes pertain to financial services; (vi) 'Payments and Capital Movements' (Chapter 8); (vi) 'Government Procurement' (Chapter 9); (vii) 'Intellectual Property' (Chapter 10); (viii) the 'Subsidies' section only of the 'Competition' chapter (Chapter 11); and (ix) 'Transparency' (Chapter 12).

<sup>94</sup> EU-Korea FTA (n 1) art 14.3.

<sup>95</sup> *ibid* art 14.4.

<sup>96</sup> *ibid* art 14.4.

<sup>97</sup> *ibid* art 14.5.

<sup>98</sup> *ibid* art 14.8-9.

<sup>99</sup> *ibid* art 14.9.

<sup>100</sup> *ibid* art 14.17.

<sup>101</sup> *ibid* art 14.17.

<sup>102</sup> Proposal for a Council Decision authorising the signature and provisional application of the Free Trade Agreement between the European Union and its Member States and the Republic of Korea (n 2) 3-4.

<sup>103</sup> 2010 Cooperation Agreement (n 3) art 1(3).

<sup>104</sup> *ibid* art 2(1)(d).

<sup>105</sup> *ibid* art 24(2).

<sup>106</sup> *ibid* art 24(1).



<sup>107</sup> *ibid* art 17(1).

<sup>108</sup> *ibid* art 18(2)(c).

<sup>109</sup> See for instance Commission, 'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system', COM(2011) 144 final, available at: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0144:FIN:en:PDF>>

<sup>110</sup> 2010 Cooperation Agreement (n 3) art 23(2)(a).

<sup>111</sup> *ibid* art 44(1).

<sup>112</sup> *ibid* art 45(3).

<sup>113</sup> *ibid* art 45(3). The EU and the Republic of Korea defined the term 'special urgency' in their Joint Interpretative Declaration Concerning Articles 45 and 46 as 'a material breach of this Agreement', in other words as a 'repudiation of this Agreement not sanctioned by the general rules of international law' or 'a particularly serious and substantial violation of an essential element of the Agreement'.

<sup>114</sup> 2010 Cooperation Agreement (n 3) art 45(4).

<sup>115</sup> *ibid* art 45(4).

<sup>116</sup> *ibid* art 46.

<sup>117</sup> Sacha Prechal, 'Direct Effect, Indirect Effect, Supremacy and the Evolving Constitution of the European Union' in Catherine Barnard (ed), *The Fundamentals of EU Law Revisited – Assessing the Impact of the Constitutional Debate* (OUP 2007) 35, 37.

<sup>118</sup> Jan Klabbers, 'International Law in Community Law: The Law and Politics of Direct Effect' in Piet Eeckhout and Takis Tridimas (eds), *Yearbook of European Law* (OUP 2001-2002) 263, 272; Jan Wouters and Dries Van Eeckhoutte, 'Giving Effect to Customary International Law Through European Community Law', KU Leuven's Institute for International Law, Working Paper No 25 (Leuven, June 2002); Mario Mendez, 'The Legal Effect of Community Agreements: Maximalist Treaty Enforcement and Judicial Avoidance Techniques' [2010] 21/1 EJIL 83, 98.

<sup>119</sup> Joseph Weiler, *The Constitution of Europe* (CUP 1999) 19-20.

<sup>120</sup> Case C-149/96 *Portugal v Council* [1999] ECR I-8395, para 34. For a similar ruling, see also Case C-104/81 *Hauptzollamt Mainz v Kupferberg & Cie* [1982] ECR 3641, para 17; Case C-240/09 *Lesoochránárske zoskupenie VLK*, Judgment of 8 March 2011, para 17.

<sup>121</sup> Case T-338/08 *Stichting Natuur en Milieu v Commission*, Judgment of 14 June 2012, para 53; Case T-396/09 *Vereniging Milieudefensie and Other v Commission*, Judgment of 14 June 2012, para 53; C-366/10, *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change*, Judgment of 21 December 2011, paras 49-56; Case C-18/90 *Office national de l'emploi v Kziber* [1987] ECR 3719, para 15.

<sup>122</sup> Joined Cases 21/72 to 24/72 *International Fruit Company and Others* [1972] ECR 1219, paras 21-26; *Portugal v Council* (n 120) paras 36-39.

<sup>123</sup> *Air Transport Association of America* (n 121) para 83.

<sup>124</sup> Case 70/87 *Fedil v Commission* [1989] ECR 1781, paras 19-22; Case C-69/89 *Nakajima v Council* [1991] ECR I-2069, para 31; Case C-352/96 *Italy v Council* [1998] ECR I-6937, para 19; Case C-76/00 *Petrotub v Council* [2003] ECR I-79, para 54.

<sup>125</sup> Case C-286/02 *Bellio v Prefettura di Treviso* [2004] ECR I-3465, para 33; Joined Cases C-447/05 to 448/05 *Thomson Multimedia Sales Europe v Vestel France* [2007] ECR I-2049, para 30.

<sup>126</sup> Case C-61/94 *Commission v Germany* [1996] ECR I-3989, para 52; Case C-228/06 *Soysal and Savatli v Bundesrepublik Deutschland* [2009] ECR I-1031, para 59; Case C-308/06 *Intertanko v Secretary of State for Transport* [2008] ECR I-4057, para 42; C-366/10, *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change*, Judgment of 21 December 2011, para 50.

<sup>127</sup> *VLK* (n 120) paras 36, 40.

<sup>128</sup> *Kupferberg* (n 120) paras 22-27; Case 12/86 *Demirel* [1987] ECR 3719, para 14; *Kziber* (n 121) para 17.

<sup>129</sup> *Demirel* (n 128) para 24.

<sup>130</sup> Available at: <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=691>>

<sup>131</sup> Trade Agreement between the EU and its Member States and Colombia and Peru (26 June 2012) art 301 and 302, available at: <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=691>>

<sup>132</sup> UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Preamble. For Marco Macchia, the Aarhus Convention belongs to the category of international arrangements which, unlike the Kyoto Protocol, confer procedural rights directly upon private actors and are not addressed to States only: the Convention, therefore, 'is intended for civil society': Marco Macchia, 'Global Administrative Law Compliance: The Aarhus Convention Compliance Review System' (2008) 20/4 ERPL/REDP 1317, 1321.

<sup>133</sup> *ibid*.

<sup>134</sup> UN Economic Commission for Europe, *The Aarhus Convention: An Implementation Guide 1* (2000), online: <<http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf>> (last visited on June 27, 2012).

<sup>135</sup> *ibid*.

## **References**

- ***Treaties***

Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino, 2002 OJ L84/43

Agreement on the European Economic Area, 1994 OJ L1/3

Agreement on Technical Barriers to Trade, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, Legal Instruments-Results of the Uruguay Round, 1868 UNTS 120 (1994)

Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, 2002 OJ L352/3

Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part, 1999 OJ L311/3

Annex 13 'Cooperation on Trade and Sustainable Development' [2011] OJ L127/1335

Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, 2008 OJ L289/3

Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, 2000 OJ L276/45

Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part, 2005 OJ L265/2

Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, 2004 L304/39

Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, 2002 L129/3

Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, 2000 OJ L147/3

Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, 2000 OJ L70/2

Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, 1998 OJ L97/2

Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, 1997 OJ L187/3

2010 Framework Agreement for Trade and Cooperation between the EU and its Member States and South Korea of 10 May 2010, accessible at:  
<http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=8983>

Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, 2011 OJ L127/6

General Agreement on Tariffs and Trade, 30 October 1947, 55 UNTS 194

Kyoto Protocol to the United Nations Framework Convention on Climate Change; UN Doc FCCC/CP/1997/7/Add.1, Dec. 10, 1997, 37 ILM 22 (1998)

Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, 2009 OJ L 107/166

Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part  
<http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=7201>

Tariff Schedule of Korea and Tariff Schedule of the EU Party [2011] OJ L127/86-1123

Trade Agreement between the EU and its Member States and Colombia and Peru (26 June 2012), available at:  
<http://trade.ec.europa.eu/doclib/press/index.cfm?id=691>

Treaty Establishing the European Community ('TEC') 2002 OJ C325/33

Treaty on the Functioning of the European Union ('TFEU') 2008 OJ C115/47

UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Preamble, accessible at:  
<http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

United Nations Framework Convention on Climate Change, New York 9 May 1992, 1771 UNTS 107, 31 ILM 849 (1992)

- **EU and UN working documents**

UN Economic Commission for Europe, The Aarhus Convention: An Implementation Guide (2000)

Commission, 'Proposal for a Council Decision authorising the signature and provisional application of the Free Trade Agreement between the European Union and its Member States and the Republic of Korea' COM(2010) 136 final

Commission's DG Trade, 'The EU-Korea Free Trade Agreement in practice', available at: [http://trade.ec.europa.eu/doclib/docs/2011/october/tradoc\\_148303.pdf](http://trade.ec.europa.eu/doclib/docs/2011/october/tradoc_148303.pdf)

Council of the EU, 'Review of the EU Sustainable Development Strategy – Renewed Strategy', Document 10117/06 21, available at:

<http://register.consilium.europa.eu/pdf/en/06/st10/st10117.en06.pdf>

Commission, 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, "Global Europe: Competing in the World: A Contribution to the EU's Growth and Jobs Strategy"' COM(2006) 567 final, available at:

[http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0567en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0567en01.pdf)

Commission Staff Working Document, Annex to the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Global Europe: Competing in the World – A Contribution to the EU's Growth and Jobs Strategy, SEC(2006), available at [http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc\\_130370.pdf](http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130370.pdf)

Commission, 'Communication to the European Parliament and the Council: Implementation of Article 290 of the Treaty on the Functioning of the European Union' COM(2009) 673 final

Commission's 'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system', COM(2011) 144 final, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0144:FIN:en:PDF>

Commission, 'Staff Working Document – Impact Assessment, Document accompanying the Package of Implementation measures for the EU's objectives on climate change and renewable energy for 2020' SEC(2008) 85, C6-0041/08.

Decision 1/CP.13 'Bali Action Plan', FCCC/CP/2007/6/Add. 1, 14 March 2008

- **WTO Case-law**

United States – Import Prohibition of Certain Shrimp and Shrimp Products, Report of the Appellate Body of 12 October 1998, WT/DS58/AB/R

European Communities – Measures Affecting Asbestos and Asbestos-Containing Products, Report of the Appellate Body of 12 March 2001, WT/DS/135/AB/R

Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef, Report of the Appellate Body of 11 December 2000, WT/DS/161/AB/R

United States – Standards for Reformulated and Conventional Gasoline, Report of the Appellate Body of 29 April 1996, WT/DS2/AB/R

- **EU Case-law**

Air Transport Association of America and Others v Secretary of State for Energy and Climate Change (C-366/10), Judgment of 21 December 2011

Air Transport Association of America and Others v Secretary of State for Energy and Climate Change (C-366/10), Opinion of AG Kokott of 6 October 2011

Bellio v Prefettura di Treviso (C-286/02) [2004] ECR I-3465

Commission v Germany (C-61/94) [1996] ECR I-3989

Demirel (12/86) [1987] ECR 3719

Fediol v Commission (70/87) [1989] ECR 1781

Hauptzollamt Mainz v Kupferberg & Cie. (C-104/81) [1982] ECR 3641

International Fruit Company and Others (21/72 to 24/72) [1972] ECR 1219

Intertanko v Secretary of State for Transport (C-308/06) [2008] ECR I-4057

Italy v Council (C-352/96) [1998] ECR I-6937

Lesoochránárske zoskupenie VLK (C-240/09), Judgment of 8 March 2011

Office national de l'emploi v Kziber (18/90) [1987] ECR 3719

Monsanto v Cefetra (C-428/08) [2010] ECR I-6765

Nakajima v Council (C-69/89) [1991] ECR I-2069

Petrotube SA and Republica SA v Council (C-76/00) [2003] ECR I-79

Portugal v Council (C-149/96) [1999] ECR I-8395

Soysal and Savatli v Bundesrepublik Deutschland (C-228/06) [2009] ECR I-1031

Thomson Multimedia Sales Europe v Vestel France (C-447/05 to 448/05) [2007] ECR I-2049

Stichting Natuur en Milieu v Commission (T-338/08), Judgment of 14 June 2012

Vereniging Milieudefensie v Commission (T-396/09) Judgment of 14 June 2012

- **Legal scholarship**

Abbott K and Snidal D, 'Hard and Soft Law in International Governance' (2000) 54/3 *International Organization* 421

Alexy R, *A Theory of Constitutional Rights* (OUP 2001)

Boyle AE, 'Some reflections on the relationship of treaties and soft law' (1999) 48 *ICLQ* 901.

Çali B, 'Balancing Human Rights? Methodological Problems with Weights, Scales and Proportions' (2007) 29(1) *HRQ* 251

Chinkin C, 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38 *ICLQ* 850

Collier J and Lowe V, *The Settlement of Disputes in International Law* (OUP 1999)

Damrosch L et al, *International Law: Cases and Materials* (Thomson Reuters 2009)

Ferran E and Alexander K, 'Can Soft Law Bodies be Effective? The Special Case of the European Systemic Risk Board' (2010) 35 *EL Rev* 751

Gersen J and Posner E, 'Soft Law: Lessons from Congressional Practice' (2008) 61/3 *SLR* 1

Hornig D-C, 'Reshaping the EU's FTA Policy in a Globalizing Economy: The Case of the EU-Korea FTA' (2012) 46/2 *Journal of World Trade* 301

Klabbers J, *An Introduction to International Institutional Law* (2nd edn, CUP 2009)

Klabbers J, 'International Law in Community Law: The Law and Politics of Direct Effect' in Piet Eeckhout and Takis Tridimas (eds), *Yearbook of European Law* (OUP 2001-2002)

Macchia M, 'Global Administrative Law Compliance: The Aarhus Convention Compliance Review System' (2008) 20/4 *ERPL/REDP* 1317

Mendez M, 'The Legal Effect of Community Agreements: Maximalist Treaty Enforcement and Judicial Avoidance Techniques' [2010] 21/1 *EJIL* 83

Merrills JG, *International Dispute Settlement* (5th edn, CUP 2011)

Montini M, 'EC External Relations on Environmental Law' in Joanne Scott, *Environmental Protection: European Law and Governance* (OUP 2009) 127

Prechal S, 'Direct Effect, Indirect Effect, Supremacy and the Evolving Constitution of the European Union' in Catherine Barnard (ed), *The Fundamentals of EU Law Revisited – Assessing the Impact of the Constitutional Debate* (OUP 2007)

Rivers J, 'Proportionality and variable Intensity of Review' (2006) 65/1 CLJ 200

Rivers J, 'Proportionality, Discretion and the Second Law of Balancing' in George Pavlakos (ed), *Law, Rights and Discourse* (Hart Publishing 2007) 167

Scott J, *EC Environmental Law* (Longman 1998)

Scott J, 'Mandatory or Imperative Requirements in the EU and the WTO' in Catherine Barnard and Joanne Scott (eds), *The Law of the Single European Market: Unpacking the Premises* (Hart Publishing 2002) 269

Snyder F, 'The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques' (1993) 56 MLR 19

Stefan O, 'Hybridity before the Court: a Hard Look at Soft Law in the EU Competition and State Aid Case Law' (2012) 37 EL Rev 49

Weiler J, *The Constitution of Europe* (Cambridge, CUP 1999)

Wouters J and Van Eeckhoutte D, 'Giving Effect to Customary International Law Through European Community Law', KU Leuven's Institute for International Law, Working Paper No 25 (Leuven, June 2002)

**Annex I: express climate change provisions contained in the preferential trade agreements signed by the EU (other than the EU-Korea FTA)**

Non-EU countries involved	Date of signature and of entry into force	Nature of the trade agreement	Climate change provision falling under an energy heading, an environmental protection or a political cooperation heading
<b>Europe</b>			
Andorra	28/06/1990 01/01/1991	Customs Union	<u>Energy cooperation clause:</u> No general energy heading <u>Environmental cooperation clause:</u> No general environmental protection clause <u>Autonomous climate change clause:</u> None
San Marino	16/12/1991 01/04/2002	Customs Union	<u>Energy cooperation clause:</u> No general energy heading <u>Environmental cooperation clause:</u> General environmental protection clause (Article 16) <u>Autonomous climate change clause:</u> None
Turkey	22/12/1995 31/12/1995	Customs Union (Decision 1/95 of the Association Council based on the Ankara Agreement of	<u>Energy cooperation clause:</u> No general energy heading <u>Environmental cooperation clause:</u> No general environmental protection clause <u>Autonomous climate change clause:</u> None

		12 September 1963)	
Norway, Iceland and Lichtenstein	2/5/1992 1/1/1994	European Economic Area Agreement	<u>Energy cooperation clause:</u> No general energy heading <u>Environmental cooperation clause:</u> General environmental protection clause (Article 73) <u>Autonomous climate change clause:</u> None
Switzerland	22/07/1972 01/01/1973	FTA	<u>Energy cooperation clause:</u> No general energy heading <u>Environmental cooperation clause:</u> No general environmental protection clause <u>Autonomous climate change clause:</u> None
Faroe Islands	06/12/1996 01/01/1997	FTA	<u>Energy cooperation clause:</u> No general energy heading <u>Environmental cooperation clause:</u> No general environmental protection clause <u>Autonomous climate change clause:</u> None
Former Yugoslav Republic of Macedonia	09/04/2001 01/04/2004	Stabilisation and Association Agreement	<u>Energy cooperation clause:</u> Energy cooperation must cover the promotion of energy efficiency and of renewable energy (Article 99(2)) <u>Environmental cooperation clause:</u> Environmental cooperation may cover, as a priority area, the production and consumption of efficient, sustainable and clean energy (Article 103(2)) <u>Autonomous climate change clause:</u> None
Serbia	29/04/2008 01/02/2010	Interim Trade Agreement	<u>Energy cooperation clause:</u> No general energy heading <u>Environmental cooperation clause:</u> No general environmental protection clause <u>Autonomous climate change clause:</u> None
Albania	12/06/2006 01/04/2009	Stabilisation and Association Agreement	<u>Energy cooperation clause:</u> General energy cooperation clause (Article 107) <u>Environmental cooperation clause:</u> General environmental protection clause (Article 108) <u>Autonomous climate change clause:</u> None
Montenegro	15/10/2007 01/05/2010	Stabilisation and Association Agreement	<u>Energy cooperation clause:</u> Energy cooperation may cover the promotion of energy efficiency and of renewable energy (Article 109) <u>Environmental cooperation clause:</u> Environmental cooperation may revolve around the setting up of initiatives for establishing a 'framework for efficient, clean, sustainable and renewable production and consumption of energy'. The parties must also pay special attention to the ratification and implementation of the Kyoto Protocol (Article 111) <u>Autonomous climate change clause:</u> None
Croatia	29/10/2001 01/02/2005	Stabilisation and Association Agreement	<u>Energy cooperation clause:</u> Energy cooperation must cover the promotion of energy efficiency and of renewable energy (Article 101) <u>Environmental cooperation clause:</u> Environmental cooperation must focus, amongst others, on the efficient and clean production/use of energy (Article 103) <u>Autonomous climate change clause:</u> None
Bosnia-Herzegovina	16/06/2008 Date of entry into force still	Stabilisation and Association	<u>Energy cooperation clause:</u> General energy cooperation clause (Article 107) <u>Environmental cooperation clause:</u>



	pending	Agreement	Environmental cooperation may revolve around the setting up of initiatives for establishing a 'system for efficient, clean, sustainable and renewable production and consumption of energy'. The parties must also pay special attention to the ratification and implementation of the Kyoto Protocol (Article 108) <u>Autonomous climate change clause:</u> None
<b>Latin America</b>			
Mexico	08/12/1997 01/10/2000	Economic Partnership, Political Coordination and Cooperation Agreement	<u>Energy cooperation clause:</u> The parties must cooperate, amongst other means, through the conception of 'more efficient energy generation processes' and the promotion of alternative sources of renewable energy protective of the environment (Article 23) <u>Environmental cooperation clause:</u> General environmental protection clause (Article 34) <u>Autonomous climate change clause:</u> None
Chile	18/11/2002 1/03/2005	Association Agreement	<u>Energy cooperation clause:</u> Cooperation on energy is designed to strengthen economic relations in hydroelectricity, renewable energy and energy-saving, amongst other key sectors (Article 22(1)) <u>Environmental cooperation clause:</u> Environmental cooperation must encourage the prevention of contamination and of degradation of ecosystems (Article 28(1)) <u>Autonomous climate change clause:</u> None
Peru and Colombia	26/06/2012 Date of entry into force still pending	FTA	<u>Energy cooperation clause:</u> No general energy heading <u>Environmental cooperation clause:</u> The parties commit to effectively implement in their respective national laws the Kyoto Protocol (amongst other international environmental agreements) (Article 270(2)) <u>Autonomous climate change clause:</u> Climate change heading falling under Title IX entitled 'Trade and Sustainable Development'. The parties recognize the importance of encouraging and enhancing adaptation efforts. They also commit to promote trade in and an easier access to and use of best available technologies for the production and use of clean energy. The parties must also promote climate change and renewable energy measures in such a way as to limit technical barriers to trade (Article 275)
Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama (Central America)	29/06/2012 Date of entry into force still pending	FTA	<u>Energy cooperation clause:</u> The parties must reinforce their energy cooperation so as to promote, amongst others, sustainable clean and renewable energy sources, energy efficiency and energy saving technology (Article 65) <u>Environmental cooperation clause:</u> Political dialogue in the environmental field must be aimed, amongst others, at the fight against the threat of climate change (Article 20(2)) <u>Autonomous climate change clause:</u> Title V 'Environment, Natural Disasters and Climate Change' is part of Part III entitled 'Cooperation' Cooperation must cover, amongst other global issues, climate change (Article 50(3)(c)). Cooperation measures may include: 'transfer and use of

			sustainable technology and know-how'; the integration of environmental considerations in land-use management; reinforcement of environmental management; 'assisting in the implementation and enforcement of those multilateral environmental agreements that the Parties are part of' (Article 50(4)).
<b>Africa</b>			
Morocco	26/02/1996 01/03/2000	Association Agreement (Euro-Mediterranean Agreement)	<u>Energy cooperation clause:</u> Energy cooperation must focus on the promotion of renewable energy and of energy efficiency (Article 57) <u>Environmental cooperation clause:</u> General environmental protection clause (Article 48) <u>Autonomous climate change clause:</u> None
Algeria	22/04/2002 01/09/2005	Association Agreement (Euro-Mediterranean Agreement)	<u>Energy cooperation clause:</u> Reference to the aims of cooperation in the energy and mining sectors as including the development of renewable energies and of energy efficiency (Article 61) <u>Environmental cooperation clause:</u> General environmental protection clause (Article 52) <u>Autonomous climate change clause:</u> None
Tunisia	17/07/1995 01/03/1998	Association Agreement (Euro-Mediterranean Agreement)	<u>Energy cooperation clause:</u> Energy cooperation must focus on the promotion of renewable energy and of energy efficiency (Article 57) <u>Environmental cooperation clause:</u> General environmental protection clause (Article 48) <u>Autonomous climate change clause:</u> None
Egypt	25/06/2001 01/06/2004	Association Agreement (Euro-Mediterranean Agreement)	<u>Energy cooperation clause:</u> Energy cooperation must focus on the promotion of renewable energy and of energy efficiency (Article 53) <u>Environmental cooperation clause:</u> General environmental protection clause (Article 44) <u>Autonomous climate change clause:</u> None
South Africa	11/10/1999 01/05/2004	Trade, Development and Cooperation Agreement	<u>Energy cooperation clause:</u> The Agreement calls for further cooperation between the two parties with a view to promoting 'new and renewable forms of energy' and the use of 'environmentally friendly technologies', as well as to stimulating 'the rational use of energy' through energy efficiency systems (Article 57) <u>Environmental cooperation clause:</u> Reference to the parties' duty to cooperate so as to aim for sustainable development through 'the sustainable use of renewable natural resources' (Article 84(1)) <u>Autonomous climate change clause:</u> None
Ivory Coast	26/11/2008  Date of entry into force still pending	Interim Economic Partnership Agreement	<u>Energy cooperation clause:</u> No general energy heading <u>Environmental cooperation clause:</u> No general environmental protection clause <u>Autonomous climate change clause:</u> None
Cameroon	15/01/2009 Date of entry into force still pending	Interim Economic Partnership Agreement	<u>Energy cooperation clause:</u> No general energy heading <u>Environmental cooperation clause:</u> No general environmental protection clause but a clause covering environmental issues (Article 60) that falls under Chapter 5 on 'Sustainable Development' <u>Autonomous climate change clause:</u> None
<b>Middle East</b>			

Palestinian Authority	24/02/1997 01/07/1997	Interim Association Agreement (Euro-Mediterranean Agreement)	<u>Energy cooperation clause:</u> Energy cooperation must focus on the promotion of renewable energy and of energy efficiency (Article 48) <u>Environmental cooperation clause:</u> General environmental protection clause (Article 50) <u>Autonomous climate change clause:</u> None
Jordan	24/11/1997 01/05/2002	Association Agreement (Euro-Mediterranean Agreement)	<u>Energy cooperation clause:</u> Energy cooperation must focus on the promotion of renewable energy and of energy efficiency (Article 74) <u>Environmental cooperation clause:</u> General environmental protection clause (Article 65) <u>Autonomous climate change clause:</u> None
Israel	20/11/1995 1/6/2000	Association Agreement (Euro-Mediterranean Agreement)	<u>Energy cooperation clause:</u> Energy cooperation must be designed to develop renewable energy sources and to promote 'energy conservation' (Article 51(1)) <u>Environmental cooperation clause:</u> General environmental protection clause (Article 50) <u>Autonomous climate change clause:</u> None
Syria	18/01/1977 01/11/1978	Cooperation Agreement	<u>Energy cooperation clause:</u> No general energy heading <u>Environmental cooperation clause:</u> No general environmental protection clause <u>Autonomous climate change clause:</u> None
Lebanon	17/06/2002 01/04/2006	Interim Trade Agreement (Euro-Mediterranean Agreement)	<u>Energy cooperation clause:</u> No general energy heading <u>Environmental cooperation clause:</u> No general environmental protection clause <u>Autonomous climate change clause:</u> None
<b>Caribbean States</b>			
Antigua, Barbuda, Bahamas, Barbados, Dominica, Belize, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Christopher & Nevis, Saint Lucia, Saint Vincent & the Grenadines, Suriname and Trinidad & Tobago (CARIFORUM States)	15/10/2008 Date of entry into force still pending	Economic Partnership Agreement	<u>Energy cooperation clause:</u> No general energy heading <u>Environmental cooperation clause:</u> The parties must ease trade in renewable and energy-efficient goods/services (Article 183(5)) <u>Autonomous climate change clause:</u> Article 138 entitled 'Cooperation on eco-innovation and renewable energy' is part of Section 1 'Innovation' of Chapter 2 'Innovation and intellectual property' that falls under Title IV 'trade-related issues' that itself is part of Part II 'Trade and Trade-Related Matters'. According to Article 138, the parties agree to cooperate and facilitate support in projects concerning energy efficiency and renewable energy and in projects involving Clean Development Mechanism applications

**Annex II: Dispute settlement mechanisms applicable to climate change and environmental provisions of the preferential trade agreements signed by the EU (other than the EU-Korea FTA)**

Non-EU countries involved	Negotiation and consultation procedure	Mediation, conciliation and hybrid forms of dispute settlement mechanism	Arbitral and judicial procedure
<b>Europe</b>			
Andorra	N/A	N/A	N/A

San Marino	No	Yes The Cooperation Committee may be seized by any party of a dispute regarding the interpretation of the Agreement (Article 24(1))	Yes Arbitration procedure in case of failure of the Cooperation Committee to settle the dispute (Article 24(2))
Turkey	N/A	N/A	N/A
Norway, Iceland and Lichtenstein	No	Yes EEA Joint Committee may be seized of a dispute concerning the interpretation or application of the EEA (Article 111(1)(2))	Yes In case of failure of the EEA Joint Committee to settle the dispute over the interpretation or application of the Agreement, the two parties may jointly agree to request from the Court of Justice a ruling on the interpretation of the relevant rule of the EEA Agreement, provided that the latter provision is also mirrored in the text of the founding Treaties (Article 111(3)) Any Contracting Party may unilaterally launch arbitration proceedings in case of dispute regarding the scope or duration of safeguard measures adopted by the complaining party to the dispute (Article 111(4))
Switzerland	N/A	N/A	N/A
Faroe Islands	N/A	N/A	N/A
Former Yugoslav Republic of Macedonia	Yes	Yes The Stabilisation and Association Council may be seized by any party of a dispute regarding the interpretation or application of the Agreement. The Stabilisation and Association Council has the power to settle the dispute through binding decision (Article 111). In case of non-performance of its obligation(s) by one party, the other party may take 'appropriate measures' after having sought a mutually acceptable solution within the Stabilisation and Association Council. Such measures must be immediately notified to the Association Council, should the parties fail to arrive at a mutually acceptable solution (Article 118(2))	No
Serbia	N/A	N/A	N/A
Albania	Yes Obligation of prompt consultation on any	Yes The Stabilisation and Association Council may be	No

	matter regarding the interpretation or implementation of the Agreement (Article 127)	seized by any party of a dispute regarding the interpretation of the Agreement. The Stabilisation and Association Council has the power to settle the dispute through binding decision (Article 119). In case of non-performance of its obligation(s) by one party, the other party may take 'appropriate measures' after having sought a mutually acceptable solution within the Stabilisation and Association Council. Such measures must be immediately notified to the Association Council, should the parties fail to arrive at a mutually acceptable solution (Article 126)	
Montenegro	Yes	Yes Obligation of good faith consultations within the Stabilisation and Association Council in case of dispute regarding the interpretation or implementation of the Agreement (Article 130) In case of non-performance of its obligation(s) by one party, the other party may take 'appropriate measures' after having sought to find a mutually acceptable solution within the Stabilisation and Association Council. The latter must be immediately informed about any appropriate measure adopted by the complaining party, should the parties fail to arrive at a mutually acceptable solution (Article 129(4))	No
Croatia	Yes	Yes The Stabilisation and Association Council may be seized by any party of a dispute regarding the interpretation of the Agreement. The Stabilisation and	No

		<p>Association Council has the power to settle the dispute through binding decision (Article 113).</p> <p>In case of non-performance of its obligation(s) by one party, the other party may take 'appropriate measures' after having sought a mutually acceptable solution within the Stabilisation and Association Council. Such measures must be immediately notified to the Association Council, should the parties fail to arrive at a mutually acceptable solution (Article 120)</p>	
Bosnia-Herzegovina	Yes	<p>Yes</p> <p>Obligation of good faith consultations within the Stabilisation and Association Council in case of dispute regarding the interpretation or implementation of the Agreement (Article 126(2)).</p> <p>The Stabilisation and Association Council may be seized by any party of a dispute regarding the application or interpretation of the Agreement (Article 125(3))</p> <p>In case of non-performance of its obligation(s) by one party, the other party may take 'appropriate measures' after having sought to find a mutually acceptable solution within the Stabilisation and Association Council. The latter must be immediately informed about any appropriate measure adopted by the complaining party, should the parties fail to arrive at a mutually acceptable solution (Article 125(4))</p>	N/A
<b>Latin America</b>			
Mexico	N/A	<p>Yes</p> <p>Joint Council is to monitor implementation of the Agreement by the parties, and to determine the</p>	<p>Yes</p> <p>Joint Council may determine the appropriate dispute settlement procedure applicable to a particular trade or trade related dispute (Article</p>

		appropriate dispute settlement procedure applicable to a particular trade or trade related dispute (Articles 45-49)	50)
Chile	Yes	Yes Requirement for good faith consultation (with or without the intervention of the Association Committee) (Article 183)	Yes If the parties fail in their consultation efforts, any party to the dispute may initiate the arbitration procedure (Articles 184 through and 189)
Peru and Colombia	Yes Obligation of good faith consultations (Article 301)	No	Yes In the event the consulting parties failed to solve their dispute through consultations, the complaining party may initiate the establishment of an arbitration panel (Article 302)
Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama (Central America)	Yes	Yes Obligation placed on a party to a dispute to inform the Association Council before the proposed adoption of 'appropriate measures' in response to an alleged breach of the agreement by the other party (save in case of emergency) in order to arrive at a solution acceptable to both parties to the dispute (Article 355(2))	No
<b>Africa</b>			
Morocco	Yes	Yes The Association Council may be seized by each of the parties of any dispute regarding the interpretation or application of the Agreement (Article 86)	Yes Either party may launch arbitration proceedings in case of inability of the Association Council to settle the dispute by decision (Article 86)
Algeria	Yes	Yes The Association Council may be seized by each of the parties of any dispute regarding the interpretation or application of the Agreement (Article 100)	Yes Either party may launch arbitration proceedings in case of inability of the Association Council to settle the dispute by decision (Article 100)
Tunisia	Yes	Yes The Association Council may be seized by each of the parties of any dispute regarding the interpretation or application of the Agreement (Article 86)	Yes Either party may launch arbitration proceedings in case of inability of the Association Council to settle the dispute by decision (Article 86)
Egypt	Yes	Yes The Association Council may be seized by each of the parties of any dispute	Yes Either party may launch arbitration proceedings in case of inability of the Association Council to settle the

		regarding the interpretation or application of the Agreement (Article 82)	dispute (Article 82)
South Africa	Yes	Yes The Cooperation Council may be seized by each of the parties of any dispute regarding the interpretation or application of the Agreement (Article 104)	Yes Either party may launch arbitration proceedings in case of inability of the Cooperation Council to settle the dispute by decision (Article 104)
Ivory Coast	N/A	N/A	N/A
Cameroon	N/A	N/A	N/A
<b>Middle East</b>			
Palestinian Authority	Yes	Yes The Joint Committee may be seized by each of the parties of any dispute regarding the interpretation or application of the Agreement (Article 67)	Yes Either party may launch arbitration proceedings in case of inability of the Association Council to settle the dispute by decision (Article 67)
Jordan	Yes	Yes The Association Council may be seized by each of the parties of any dispute regarding the interpretation or application of the Agreement (Article 97)	Yes Either party may launch arbitration proceedings in case of inability of the Association Council to settle the dispute by decision (Article 97)
Israel	Yes	Yes The Association Council may be seized by each of the parties of any dispute regarding the interpretation or application of the Agreement (Article 75)	Yes Either party may launch arbitration proceedings in case of inability of the Association Council to settle the dispute by decision (Article 75)
Syria	N/A	N/A	N/A
Lebanon	N/A	N/A	N/A
<b>Caribbean States</b>			
Antigua, Barbuda, Bahamas, Barbados, Dominica, Belize, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Christopher & Nevis, Saint Lucia, Saint Vincent & the Grenadines, Suriname and Trinidad & Tobago (CARIFORUM States)	Yes	Yes	Yes In case the parties to a dispute have failed to solve it through either the consultation procedure or mediation, the complaining party is entitled to launch arbitration proceedings (Articles 202 through 223)



**THE EU-KOREA FTA AND THE RELAXATION OF REGULATORY MEASURES  
IN THE MECHANICAL ENGINEERING INDUSTRY**

BERNADETTE ANDREOSSO-O'CALLAGHAN<sup>1</sup>

During the preparation to the signing of the EU-Korea Free Trade Area Agreement, the mechanical engineering and transport sector (SITC 7, Revision 3; NACE 26-30 Revision 2) was highlighted as a potential major beneficiary of the agreement, particularly on the South-Korean side. This stems from the relative importance of the sector in terms of total trade between the two entities. The sector has also been critical in the process of industrialisation in many EU countries and in South-Korea as well as in the emergence of South-Korea as an internationally competitive global player. In particular, and given its many linkages with other industries, the mechanical engineering sub-sector (or industry) has played and still plays a critical role in both economic development and economic growth.

The 2009 generalised fall in the output of the mechanical engineering and transport sector was felt more acutely in EU countries such as Germany. It is however expected that the entry into force of the EU-Korea FTA (in 2011) will help reverse these negative trends in the near future. Designed to allow both South Korea and the EU benefit from a number of manufacturing complementarities, the EU-Korea FTA aims at dealing with a number of subtle non tariffs barriers. Of particular significance to the case of the mechanical engineering industry are regulatory obstacles such as technical regulations and standards, restrictions to access raw materials, and intellectual property rights issues. Because of the current period of profound economic recession in the EU, some countries or regions have been tempted to rely increasingly on regulatory measures such as standards and technical regulations, measures that are of utmost importance to the industrial sector analyzed here, and that are therefore the focus of this chapter.

The objective of this paper is therefore to assess the extent and impact of these regulatory obstacles in the mechanical engineering industry, in the background of mounting pressures (such as for example in steel production, an important raw material for the industry under review) created by the current crisis. The rationale for focusing on the mechanical engineering industry stems in particular from its relative importance in terms of two way trade between the two entities.

This study will start by depicting first the relative importance of the sector to both the EU and South-Korea (Section 1). The ensuing section will analyse the main regulatory measures existing in the mechanical engineering industry; this analysis will be embedded in the current discussion on regulatory measures in the framework of international and bilateral cooperation. Section 3 will provide some analytical conclusive avenues, in particular in terms of policy recommendations.

## 1. IMPORTANCE OF THE MECHANICAL ENGINEERING SECTOR TO THE TWO ECONOMIES

For convenience purposes, the broad mechanical engineering and transport sector (SITC 7, Revision 3) can be subdivided into machinery (NACE 26-28) and transport (NACE 29 and 30). NACE 26 -28 refers to: Computers, Electronics and Optical Products; Electrical Equipment; and Machinery and Equipment. These industries include *inter al.*: power generating machinery and equipment; machinery specialised for particular industries; metal working machinery; general industrial machinery and equipment n-e-s; office machines; communications equipment; and electrical machinery. As much as possible, the emphasis in the chapter is on the NACE 26-28 group of industries which will be referred to as the 'mechanical engineering sector' throughout; the transport sub-sector will be used as a comparator.

### 1.1. BROAD PERFORMANCE INDICATORS OF THE EU AND KOREAN ME SECTORS

In the case of the European Union, the mechanical engineering industry, defined more narrowly, is still a relatively important industry within EU-27 manufacturing as a whole, contributing to around 9 per cent of total manufacturing production, 10.4 of total manufacturing VA and 9.6 per cent of total manufacturing employment in 2010 (Table 1). Table 1 also shows the higher productivity levels (VA per capita) achieved by the industry in the EU-27 in 2010, and its higher performance in terms of production and productivity before the 2008 crisis, compared with the manufacturing sector as a whole. The current recession has led to job losses in this industry (-4.8 per cent over the 2008-10 period) as well as substantial declines in both production and value added terms.

**Table 1 - Key Figures of the EU-27 mechanical engineering industry**

Sector	Indicator	2010		Annual average growth rate in %			
				1995-2000	2000-2005	2005-2008	2008-2010
Manufacturing ME <sup>1)</sup>	Production, in current prices		5.885,0	5,3	2,1	6,7	-5,2
		€ bn	502,0	4,0	2,3	10,4	-8,4
Manufacturing ME <sup>1)</sup>	Gross value added, at 2010 prices		1.504,0	2,1	0,0	1,5	-5,2
		€ bn	157,5	2,4	0,3	6,0	-9,3
Manufacturing ME <sup>1)</sup>	Employees		30.063,0	-0,6	-1,3	-0,3	-4,8
		1.000	2.900,1	-1,6	-2,2	1,8	-4,8
Manufacturing ME <sup>1)</sup>	Productivity <sup>2)</sup>		50,0	2,7	1,3	1,8	-0,4
		€ 1.000	54,3	4,0	2,6	4,1	-4,7
1) ME= mechanical engineering; NACE 28 only; 2) Value added per capita and annum at 2010 prices							

Source: Ecorys (2012) page 6.

NB: In the Ecorys Report, the ME industry is narrowly defined and excludes therefore Computers and Electrical Equipment.

**Table 2** - Regional distribution of Mechanical Engineering in the EU (NACE 28 only, 2008)

Member State	Production	Value added Share of EU-27	Employment
Germany	38.0%	41.5%	34.1%
Italy	19.1%	15.6%	15.1%
United Kingdom	6.3%	7.1%	6.6%
France	7.9%	7.9%	8.6%
Spain	3.9%	3.9%	4.1%
Poland	1.9%	2.3%	4.8%
Czech Republic	2.0%	1.9%	4.5%
Slovakia	0.5%	0.4%	1.3%

Source: Eurostat; Cambridge Econometrics; Ifo Institute.

As clearly shown in table 2, EU mechanical engineering firms are regionally concentrated in Central Europe encompassing Germany, Austria, northern Italy, the Netherlands, France, the Czech Republic, Slovakia and Poland. Clusters of mechanical engineering firms can also be found in Switzerland (an EEA county) as well as in the Basque region of Spain. Owing to their size, the main EU producing countries are Germany, with 38 and 34.1 per cent of total EU production and employment respectively, Italy (19.1 and 15.1 per cent respectively), France (7.9 per cent for both production and employment) and the UK (6.3 and 7.1 per cent respectively). Cross-border links, through trade and investment are important, conferring the industry a pan-EU dimension/character.

On the Korean side, the structure of the 'other machinery' industry (SITC 71-74 and 77) shows a preponderance of SMEs focusing on products in the mid-range technology and price category, that is below European or Japanese competitors, albeit significantly higher than Chinese machinery firms. This is in contrast to EU mechanical engineering (ME) firms who supply high-tech machinery. The quality gap between EU and Korean machinery (and transport) products has nevertheless diminished considerably in the last few decades making Korea-sourced products increasingly more desirable on the EU market.<sup>2</sup> The Korean ME SMEs have a significantly lower level of internationalization than their EU competitors. The Korean machine-tools industry still has an import dependency of over 40 per cent, especially for high-tech equipment such as laser cutting devices (Korean-German Chamber of Commerce and Industry, 2010). In the Korean market, foreign products in this sector are mostly concentrated in the area of 'other machinery', such as pumps/compressors and processing/lifting machinery. Table 3 shows how production in the Korean machinery industry (referred to as capital goods here) had been hit by the 2008 crisis but how it recovered quickly surpassing consumer goods industries over the period 2005-2011. Table 4 depicts the different labor costs trajectories of the different Korean ME industries over the period 2005-2010, with labor costs in computers and motor vehicles going in opposite directions.

**Table 3.** Manufacturing Production Index, 2005-2011 (2005 = 100)

Item / Year	2005	2006	2007	2008	2009	2010	2011
All Items	100,00	108,70	116,40	120,30	120,00	140,10	149,90
A. Capital Goods, of which:	100,00	108,00	117,20	124,60	120,00	139,80	145,60
1. Manufacturing Equipment	100,00	113,00	118,70	121,10	109,10	161,00	166,00
2. Electricity	100,00	107,00	121,80	152,50	164,70	164,50	165,90
3. Communication	100,00	109,50	124,60	138,10	130,00	119,70	108,00
4. Transportation Equipment	100,00	107,50	118,60	134,20	137,30	128,00	142,70
5. Agriculture	100,00	90,80	89,70	85,30	77,10	89,60	108,50
6. Construction	100,00	111,60	135,50	134,30	69,60	139,40	173,80
7. Office	100,00	93,70	98,40	86,90	83,10	98,40	88,60
8. Others	100,00	109,50	118,20	120,50	123,00	139,40	143,90
B. Intermediate Goods	100,00	111,70	121,70	126,10	128,50	153,70	169,50
C. Consumers' Goods	100,00	102,90	105,40	106,40	102,70	112,60	112,30

Source: Bank of Korea: ECOS Economic Statistics System.

**Table 4.** Labor costs developments in the Korean ME sector compared with manufacturing (2005 and 2010; base 100 in 2005)

Sector / Year	2005	2006	2007	2008	2009	2010
Manufacturing	100,00	95,10	96,20	94,50	92,20	86,90
Machinery and Equipment, of which:	100,00	105,70	112,10	111,60	119,40	99,90
1. Computers and Office Machinery	100,00	84,60	73,00	66,00	56,20	62,60
2. Electrical Machinery and Apparatus n.e.c.	100,00	103,10	108,90	96,10	95,40	89,90
3. Electronic Components, Radio, Television and Communication	100,00	89,10	75,80	75,60	68,00	68,40
4. Medical, Precision and Optical Instruments	100,00	107,80	120,70	128,20	116,50	112,50
5. Motor Vehicles, Trailers and Semitrailers	100,00	98,80	104,40	122,40	113,80	118,50
6. Other Transport Equipment	100,00	96,10	115,60	95,80	83,30	85,30

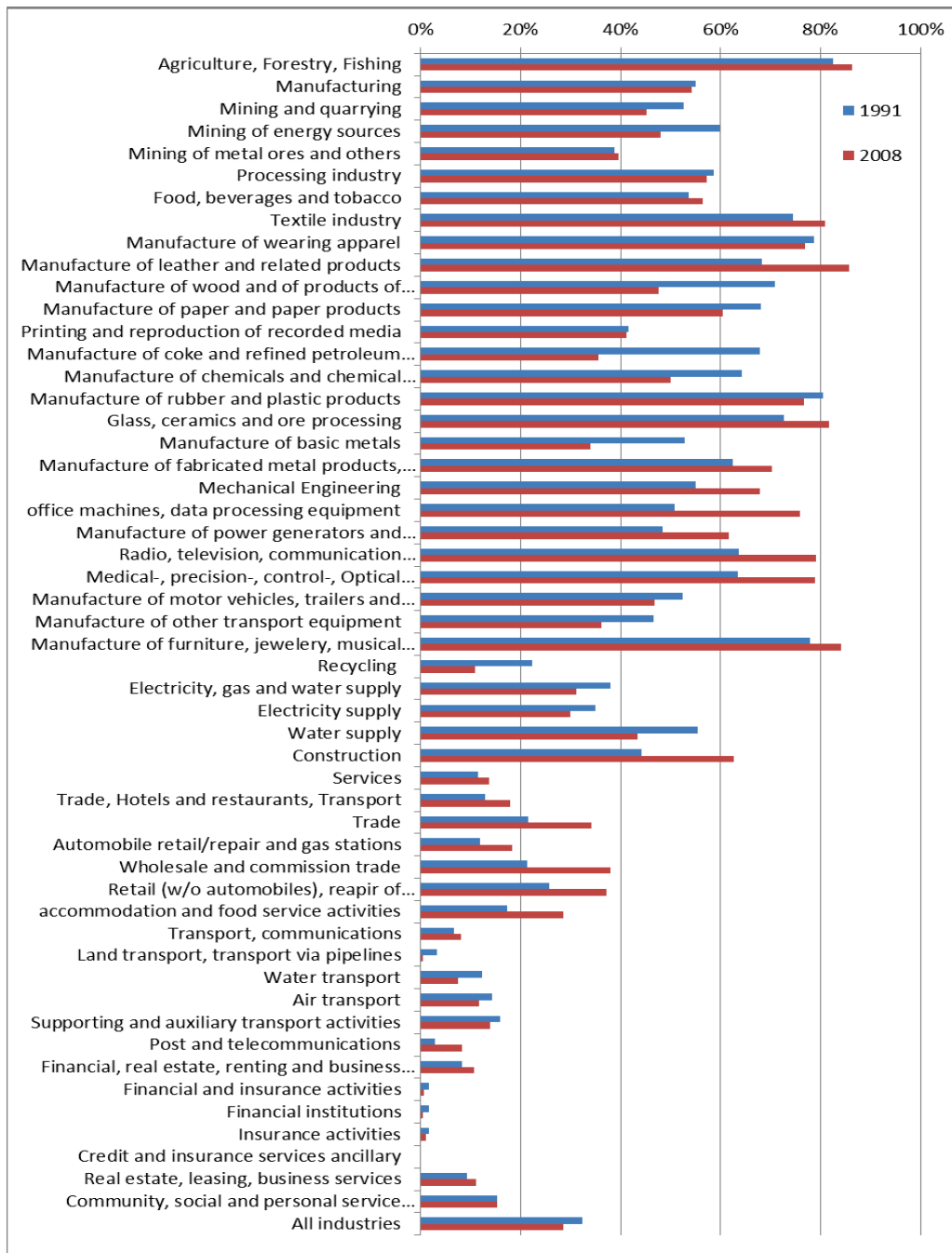
Source: Bank of Korea: ECOS Economic Statistics System.

The relative importance of the mechanical engineering sector to the EU and Korea economies needs to be appraised also in *indirect* terms. Despite the fact that, in terms of their direct contribution to total output, value added, employment and trade, mechanical engineering industries are moderately significant, the *indirect* macro-economic impact of these industries is notable. This stems from the strategic importance of the mechanical engineering sector in terms of industrial and economic development. The term 'strategic' ought to be understood primarily in the sense that the sector occupies a crucial role in the diffusion of technological change to other industries and in that it commands both productivity and efficiency gains in downstream industries. This is explained by the fact that much of the demand for mechanical engineering products is a derived demand; mechanical engineering firms supply capital goods for investment in other manufacturing and service industries, who themselves produce final products and services. Figure 1 depicts the multiple synergies of the mechanical engineering sector with the rest of the economy in a typical country such as Germany by showing the share of total investment in mechanical engineering by each industry. As can be seen, mechanical engineering represented for example substantially more than 80 per cent of all investment by agriculture, forestry and fishing industries in 2008.

In particular, the transport sector (including aerospace) is a very active source of demand for mechanical engineering products. High levels of automation in transport after WWII explain the intimate technical connection between the two sub-sectors.

Consequently, the crucial role of the mechanical engineering sector explains much of the industrial policy choices made in the past by countries such as Germany, Sweden, France and Italy in the EU as well as Japan, South Korea and increasingly China in Asia.<sup>3</sup> The Japanese mechanical engineering breakthrough in the 1970s was due to the strong positioning of the country on office machines and automatic data processing machines as well as on the strong integration of these newly-born numerical systems into machinery *per se*, giving birth to numerically controlled machinery. In the case of South Korea, a radical policy change centered on a rapid industrialization of the country through capital and technology accumulation led to the 'Korean economic miracle' from the late 1960s, with a growth rate culminating to 16.9 per cent in 1973 (Hakwon Sunoo, 1994).

**Figure 1 – Synergies between the mechanical engineering sector and other industries in Germany (investment in mechanical engineering products by industry, 1991 and 2008)**



Source: . Strobel, T., S. Sauer & K. Wohlrabe (2012) Investorenrechnung - Dokumentation von Quellen, Verarbeitung und Methodik, Ifo Institut, München.

## 1.2. TRADE PERFORMANCE IN THE ME SECTOR

The EU relative trade specialisation in the broad mechanical engineering & transport sector and in the two major components of this broad sector is shown in table 5. The table shows how the mechanical engineering sector, rather than transport, contributes to EU trade with the world in general and with South Korea in particular. In 2011, the broad ME and transport sector represented more than 42 per cent of EU merchandise exports to the world; this compared with a smaller share (26 per cent) in total EU merchandise imports. The mechanical engineering sub-sector represented in the same year more than 21 per cent of all EU mechanical exports to the world.

**Table 4.** EU trade in mechanical engineering and transport (year 2011; in million € and % of EU total merchandise trade)

SITC 7 Rev.3 (UN, WTO/ITS)	Exports to the world		Imports from the world		Exports to South Korea		Imports from South Korea	
	Mill €	%	Mill €	%	Mill €	%	Mill €	%
<b>1. Machinery and Transport Equipment (SITC 7)</b> of which:	647,511	42%	438,645	26%	16,146	50%	23,123	64%
<b>1.1. Office and Telecommunication Equipment (75&amp;76)</b>	80,438	5%	178,402	11%	1,264	4%	7,820	22%
<b>1.2. Transport Equipment (78&amp;79)</b>	243,239	16%	102,056	6%	5,590	17%	10,187	28%
<b>1.3. Other Machinery (71-74 and 77)</b>	321,428	21%	158,187	9%	9,262	29%	5,116	14%
<b>Total (0000)</b>	<b>1,531,122</b>	<b>100</b>	<b>1,683,931</b>	<b>100</b>	<b>32,419</b>	<b>100</b>	<b>36,057</b>	<b>100</b>

Source: Derived from EUROSTAT, Comext, Statistical Regime 4, Luxembourg.

*NB: Small discrepancies in the sum figures (Nace 2400) are due to rounding errors in the raw figures released by EUROSTAT. Intra-EU trade excluded.*

First, EU-South Korea bilateral mechanical engineering trade shows how South-Korea is relatively important for EU trade in this group of industries. Mechanical engineering and transport represents 50 per cent of EU merchandise exports to South-Korea, whereas this figure is 29 per cent for the mechanical engineering sub-sector.

When assessing EU trade with the world, the table shows that both the mechanical engineering and transport sub-sectors are still comparatively sound areas of productive activity for the EU. The EU trade balance with the world is indeed positive in all cases except for office and telecommunication equipment where the trade balance is persistently negative.

The picture in terms of EU-Korea bilateral mechanical engineering and transport trade is nevertheless rather different. The EU revealed comparative advantage at the global level in this broad sector (with a trade surplus of €208.8 billion in 2011) is somewhat annihilated by its bilateral trade with Korea, a country with which the deficit has been growing over time. The EU deficit with South Korea (€-6.9bn in 2011) in the sector as a whole is somewhat compensated by a trade surplus in the 'other machinery' category (€4.1bn in 2011). A longitudinal analysis using UN Comtrade data over a long period shows that the growth rate of EU machinery and transport imports from South Korea has been consistently greater than the growth rate of EU machinery and transport exports to the same country, widening thereby the negative EU trade balance over time (Guerin. et al., 2007).

Conversely, the analysis of the Korean ME trade position globally and with the EU over the last decade shows that although South-Korean total trade *vis-à-vis* the EU (and globally) is positive in the manufacturing sector as a whole, this is not the case for machinery products *stricto sensu*, that is when excluding office equipment machines (and transport). The Korean trade balance with the EU (and globally) is negative in the group of 'other machinery' industries and the relatively weak position of Korea has been growing over the decade under review. From a Korean perspective, trade specialization in machinery (again excluding office equipment and transport) measured by the RCA (Balassa) Index has deteriorated from -125.1 in 2000 to -147.3 in 2010 *vis-à-vis* the EU (Ecorys, 2012). However, when office machines are included in the data, the ME trade balance is advantageous to South Korea, as has been noted above.

### **1.3. IMPACT IN TERMS OF FUTURE TRADE GROWTH IN THE CONTEXT OF THE FTA**

It clearly follows from the above analysis that the Korean ME sector is particularly strong in the electronics-telecommunication segment (as well as in transport) and weak in the 'other machinery' industry. In the electronics-telecomm industry, Korea has a strong position in semiconductors, display panels and mobile phones which are the top three export commodities of this industry. Conversely, the reasons for the dismal EU performance in the ME sector as a whole, and in particular in electronics-telecomm and transport stem from qualitative as well as quantitative features of EU production and trade with such a partner country (Ecorys, 2012). From a quantitative viewpoint, customs duties and other trade barriers (particularly on the Korean market) have been noted as important deterring forces to exporters; the South Korean market is still perceived as a relatively sheltered market. According to the European Commission (2010), the removal of customs duties after the entering into force of the EU-Korea FTA agreement in July 2011 would allow the machinery and appliances sector to be the sector benefiting the most in absolute terms from the agreement (some €312 million of duties would be removed immediately after the agreement enters into force, out of a total of €450 million of duties affecting this sector). Products falling in the office and telecommunications equipment category, as well as those in the transport sector would benefit from a gradual liberalisation (over 5 years) on the Korean market.<sup>4</sup> These estimates concur with the results of a number of studies that have highlighted how the mechanical engineering sector would benefit from a complete elimination of tariff and non-tariff barriers (NTBs) (Andreosso-O'Callaghan, 2009; Breuss and François, 2011).



As in all studies on all trade liberalisation, the welfare impact of trade barriers removal can easily be estimated, whereas that of non-tariff barriers such as the many regulatory measures is a much more arduous task. Given the high level of technical sophistication characterising the mechanical engineering sub-sector (as well as the transport sub-sector), the tackling of these regulatory measures in the ambit of the EU-Korea FTA should theoretically lead to substantial additional gains, in particular for EU manufacturers. To this issue we now turn, by keeping the emphasis again on mechanical engineering.

## 2. REGULATORY MEASURES IN THE MECHANICAL ENGINEERING SUB SECTOR

### 2.1. REGULATORY MEASURES DEFINED

From the viewpoint of a mechanical engineering firm, accessing a tariff-free foreign market implies tackling the sensitive and laborious issue of regulatory measures such as standards and technical regulations as well as market entry administrative procedures. Whereas the latter can be listed as generic regulatory measures that affect all imports in the same way, standards and technical regulations are product-specific. By setting out the specific characteristics of the product (size, labelling, performance, etc.), standards and technical regulations are therefore more prevalent in some industries, in particular in the technology-based industries such as those under review here. At the concept design phase, the designer of a product must therefore consider different technical requirements or constraints to which the manufacturer must comply throughout the whole product life-cycle, that is from conception and design to recycling and disposal (Kim *et al.* 2012). Whereas conformity with standards is voluntary for the exporter, compliance with technical regulations is mandatory making the latter more constraining and onerous. This subtle distinction implies that, *prima facie*, an exporter of a specific type of machinery should find it easier to sell his product in a destination country where standards, rather than technical regulations, predominate. However, although products not complying with standards will be allowed to enter the destination market, the standard-aware consumer will ultimately opt for the standard-compliant (domestic) product, resulting in shrinking market shares for the foreign produce. In the mechanical engineering sector, many of these standards and technical regulations are issued in order to protect consumers' safety and health and to preserve the environment. The significant growth of these regulatory measures during the past few years can indeed be explained by increasing consumers' demand for highly performing, safe and environmentally-friendly products and processes of production in the context of rising standards of living and increasing consumers' awareness in terms of water shortages and soil erosion.

For the typical ME firm, the rise in both the number and the sophistication of regulatory measures involves higher costs, in particularly for SMEs.<sup>5</sup> Whereas most manufacturers in the transport equipment industry are large firms, the mechanical engineering sector in the EU comprises a myriad of firms that are either small (up to 250 employees) or medium-sized (up to 2000 employees). They are indeed rather small compared to their global, in particular Asian and Korean, competitors. At EU level, restructuring has therefore been one way of dealing with these additional cost pressures. More specifically, the EU mechanical engineering industry has been consolidating since the early 1990s, with cross-border mergers and acquisitions leading to larger entities. Smaller

firms have therefore been merged and in some instances private equity firms and financial investors have been involved in the creation of sustainable units particularly in the aftermath of economic downturns. However, even the large firms might find it difficult to cope with some new regulatory measures stemming for example from the current economic crisis. For example, the 2010 Korean regulations establishing new fuel efficiency and green house emission requirements for motor cars could have been perceived as a measure undermining market access for EU and US competitors. These measures could easily be viewed as a protectionist move in disguise. Owing to the gradual loss of competitiveness of EU mechanical engineering firms,<sup>6</sup> and of the potential threat represented by the FTA with South-Korea, according to some estimates (Copenhagen Economics, 2007), the remainder of this section will deal primarily with regulatory measures (in particular, standards), in the Korean mechanical engineering market.

## 2.2. REGULATORY MEASURES AND REGULATORY COOPERATION IN THE ME SECTOR

Economic integration at both the regional and global levels since the 1980s has triggered a noticeable growth in the number of international and regional standards. The fact that these standards are devised at a supra-national level implies a convergence or harmonisation of standards worldwide and this should in theory foster trade (Fliess *et al.*, 2010). It is in this vein that the Agreement on Technical Barriers to Trade of the WTO (or WTO TBT Agreement) was devised (Mattli and Büthe, 2003).<sup>7</sup> Using panel data analysis at the industry level, Chen and Mattoo (2008) show that regional agreements on standards increase trade between participating countries but not systematically with the rest of the world. Before looking at EU-Korea cooperation in the area, this sub-section will attempt a summary of the main regulatory measures in the case of the two economies.

### 2.2.1. REGULATORY MEASURES IN THE KOREAN ME SECTOR

For an EU exporter in Korea, the CE label implies that the product normally enters the Korean market without any difficulties. However, for high technology applications, such as laser cutting machines, additional testing and certification requirements might be necessary.

The Korean Agency for Technology and Standards (KATS) is the main body that technically regulates industry in Korea. Another agency is the Telecommunications Technology association (TTA) which establishes standards in the area of telecommunications, information technology, radio communication and broadcasting. KATS classifies standards into three types: (i) product standards are related to product measurement and quality; (ii) procedure standards specify the testing/analysis/inspection/measurement methods and process standard; (iii) horizontal standards relate to terminology, etc. The agency divides the standards into 21 sectors and categories starting with basic standards. For our purpose, the classification encompasses *inter alia* mechanical engineering, electrical and electronic engineering, as well as transportation machines.<sup>8</sup>

**Table 6a** - Increase in the number of standards in South Korea (1962-2011; all sectors)

Year	n
1962	300

1970	1,846
1980	7,029
1990	8,552
2000	10,845
2005	21,251
2007	22,760
2009	23,372
2010	23,622
2011	23,923

Source: KATS website, Seoul.

Table 6a depicts the increase in total industrial standards in Korea since 1962. These regulatory measures stipulate the testing and certifying of products with Korean requirements, activities that are carried out by domestic non-profit organisations. Of particular note is the impressive increase of technical standards since the Asian crisis, and in particular the doubling of the number of standards between 2000 and 2005. Table 6b shows a breakdown by industry as of December 2011

**Table 6.b** - Breakdown of Korean standards by industry/area (as of December, 2011)

Sector	No. of Standards	Sector	No. of Standards
Total			23,923
Basic Standards(A)	744	Ceramics (L)	475
Mechanical Engineering(B)	4,149	Chemistry (M)	3,465
Electrical & Electronic engineering (C)	3,832	Medical (P)	760
Metals (D)	1,633	Quality management (Q)	123
Mining (E)	440	Transportation machine (R)	1,067
Construction (F)	858	Service (S)	113
Necessities (G)	383	Logistics (T)	319
Foodstuffs (H)	526	Shipbuilding (V)	834
Environment (I)	672	Aerospace (W)	522
Organism(J)	78	Information (X)	2,039
Fiber (K)	891		

Source: KATS website, Seoul.

The table clearly shows that the mechanical engineering sector represent more than 33 per cent of all standards; when transport is added (including aerospace) the broad mechanical engineering and engineering sector accounts for nearly 40 per cent of all Korean standards existing in the country in 2011.

## 2.2.2. REGULATORY MEASURES IN THE EU ME SECTOR

The EU mechanical engineering sector, and in particular the machine-tool industry, has been a critical sector in the making of the Single European Market (SEM). By late 2002, less than 50 per cent of all harmonized standards had been adopted by all EU countries, with an average time lag for a technical standard to be

successfully adopted being some eight years. In spite of a great deal of intra-SEM harmonization, some national regulatory measures (in particular in the area of health and safety provisions in the workplace) still hamper today the free circulation of mechanical engineering products in the EU.

Standards' harmonization at EU level has led to the "New Approach of the European Union" materialised under a number of directives shaping the SEM, such as the Machinery Directive (2006/42/EC), replacing Directive 98/37/EC and applicable from 29<sup>th</sup> December 2009. Covering a broad range of machinery products such as wood-working machines, robots, lifting equipment, hydraulic presses, control and measuring equipment and construction equipment, this directive stipulates that the European Commission, - the central authority responsible for proposing technical harmonisation in the EU - ,<sup>9</sup> can prohibit or restrict the placing on the market of a type of machine presenting a risk in terms of health and safety by virtue of its technical characteristics. Technical standards that are in conformity with the Machinery Directive have been harmonized, and a revised list of such **Machinery Directive Harmonized Standards** can be found in the *Official Journal of the European Union* (OJ) of 29 February 2012.

Article 21 of the Machinery directive stipulates that products that have received the CE marking "should be fully recognized as being the only marking which guarantees that machinery conforms to the requirements of this Directive" (EC, 2006: L157/26). The affixing of the CE marking implies that a manufacturer has fulfilled all obligations according to all the Directives applicable to the product. Other EU directives need indeed to be taken into account by ME producers and traders on the EU market, such as the EU exhaust gas Directive (Directive 2000/25/EC).<sup>10</sup> Complying with this directive implies heavy investments in the development of internal combustion engine and these investments are particularly onerous for smaller firms. In this industry, whereas sub-contracting activities of intermediate products are paramount, larger mechanical engineering firms are consequently confronted with multiple regulatory requirements at different stages of the manufacturing and assembly processes.

The dual objective of the Machinery Directive and of other related Directives is to enable the free movement of machinery products with the EU market, and to guarantee a high level of protection in terms of health and safety. For the would-be (Korean exporter), these Directives create an harmonized market where scale economies can be reaped. In spite of their technical stringency, these directives facilitate the export and sale of Korean ME products on the entire EU market.

### 2.2.3. SUMMARY

Greater integration at both the regional and global levels has led to a degree of harmonisation in the area of standards and regulatory measures. For example and as noted by the EIU (2011), Korea's FTA strategy has led to simplified export procedures and documentation. Exported products do not require any more an export license issued by a foreign exchange bank and the Ministry of Knowledge Economy helps exporters by making the information about trade restrictions readily available.

During the negotiations relating to the EU-Korea FTA, concessions such as reduced tariffs in the EU were made to the Korean negotiators in the transport sector. Interestingly, a plethora of EU directives aimed at harmonizing the EU market in the ME area can be seen as facilitating Korean exports of ME products onto the

EU market. On the Korean side, a greater awareness and sophistication in the regulatory process has led to increased standards over time, particularly in the ME and transport sector. Given the Korean relative strength in the electronics-telecommunication segment and the EU relative strength in the 'other machinery' category, further collaboration in the regulatory area should help the two trading entities capitalise from their mutual complementarity in this broad sector.

### **3. CONCLUSIONS - POLICY IMPLICATIONS**

The mechanical engineering industry has played (and still plays) a crucial role in terms of economic growth and development in both South Korea and a number of EU countries. During the negotiations leading up to the signing of the EU-Korea FTA, this industry was singled out as a key player in EU-Korean trade; in particular, trade liberalisation between the two entities would allow this industry to be the major industrial beneficiary from the agreement. Indeed, this is an industry characterised by a myriad of standards, technical regulations and market entry administrative procedures. Although standards and technical regulations are issued in the interest of the final consumer, they are product specific (and are therefore prevalent in this type of industry) and they generate numerous costs for mechanical engineering firms, in particular for SMEs, as well as for importers. These costs represent additional market entry barriers, particularly since the advent of the current economic crisis. Evidence here shows the major progress in harmonising standards and regulatory measures within the EU market, in particular through the new Machinery Directive as well as a formidable increase in the number of technical standards (in South Korea) particularly in the past 10 years or so. Although some of this increase can be attributed to the greater technical sophistication of the South Korean productive fabric, this proliferation calls clearly for the delineation of common strategies in the area, so as to make the EU-Korea FTA effective. Policy implications include for example: allowing the EU and South Korea to develop their own standard and technical regulations in harmony with an internationally agreed approach and allowing the EU Commission and regulatory bodies to take more fully into account the problems of smaller firms when they adapt to new (EU-based) regulatory measures and when contemplating to export abroad such as in South Korea. These ways forward imply efforts in increasing the transparency of data and information related to standards and regulatory measures in the ME sector and in the case of the two economic entities.

### **Endnotes**

---

<sup>1</sup> Jean-Monnet Chair of Economics, Euro-Asia Centre, Kemmy Business School, University of Limerick, and Visiting Chair, Ruhr Universität Bochum (RUB), Fakultät für Ostasienwissenschaften. Many thanks are due to Georg Koernig (RUB) for statistical help on a revised version of this work. The usual disclaimer applies.

<sup>2</sup> We deliberately use the expression 'Korean-sourced products' for, since the more systematic opening of the Korean economy to foreign direct investors after the 1997 Asian crisis, an increasing share of Korean exports to the EU are from EU firms. Korean firms are well embedded in a number of global systems of production; this implies that it is a major trader in intermediate products and that its exports have a relatively high import content particularly in the telecommunication component of the machinery engineering sector.

<sup>3</sup> The USA (with 44% of EU output in 2010), Japan (30%) and China have been mentioned as the most important competing economies for the EU-27 ME. Chinese firms are increasingly active on the EU market. Examples illustrating the penetration of Chinese firms include the takeover in 2005 of the German Dürkopp Adler by the Chinese Shanggon Group (SGSB) in the

sewing machines industry and in more upstream activities the takeover in 2011 of the Norwegian firm Elkem by the Chinese Bluestar specialized in materials and alloys used in foundries and ME firms (Ecorys, 2012).

<sup>4</sup> Under the EU-Korea FTA, the EU motor vehicles industry benefits from a safeguard clause. The agreement stipulates that the two contracting parties undertake to remove more than 98 per cent of duties in trade value over 5 years from July 2011 (some agricultural products are excluded).

<sup>5</sup> These costs are typically connected with the translation of these measures, with the hiring of technical experts and with the adjustment of production facilities in order to comply with these measures.

<sup>6</sup> In terms of price competitiveness and labour productivity for example (see Ecorys, 2012: 208).

<sup>7</sup> However, and as reminded by Zuñiga Schroder (2009), the concept of international standard does not have a clear definition since, unlike in the case of the Sanitary and Phytosanitary Measures Agreement, the bodies entitled to issue these standards have not been clearly defined by the WTO.

<sup>8</sup> See the appendix for the details under each category.

<sup>9</sup> Note that the European Committee for Standardization (CEN) is the body for the planning, drafting and adoption of European standards in all areas of economic activity with the exception of electro-technology (CENELEC) and telecommunication (ETSI).

<sup>10</sup> Other such EU directives include the following: the Electro-Magnetic Compatibility Directive (2204/108/EC, EMC); Directives 2002/88/EC and 2004/26/EC on the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery; Directive 1999/5/EC on radio and telecommunications terminal equipment; Directive 2005/88/EC on the noise emission in the environment by equipment for use outdoors; Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment; Directive 2005/32/EC establishing a framework for the setting of eco-design requirements for energy-using products.

## References

- Andreosso-O'Callaghan, B., (2009) 'Economic structural complementarity: how viable is the Korea-EU FTA?' *Journal of Economic Studies*, vol. 36, Issue 2, 147-67.
- Breuss, F. and François, J. F. (2011) 'EU-South Korea FTA – Economic impact for the EU and Austria,' FIW Policy Brief No. 10, February, Vienna.
- Chen, M. X., and A. Mattoo (2008) 'Regionalism in standards: good or bad for trade?' *The Canadian Journal of Economics*, 41:3, August, 838-63.
- Copenhagen Economics and J. F. François (2007) *Economic Impact of a Potential Free Trade Agreement (FTA) Between the European Union and South Korea*, Report For the European Commission, March, Copenhagen.
- EC (2006) Directive 2006/42/EC Of The European Parliament and of the Council of 17 May 2006 on Machinery, and amending Directive 95/16/EC, Brussels.
- Ecorys (2012) *An Introduction to Mechanical Engineering: Study on the Competitiveness of the EU Mechanical Engineering Industry*, Report for DG Enterprise and Industry, CESifo, Cambridge Economics and Teknologisk Institut, Munich, 01 February.
- European Commission (2010) *Reading guide to EU-South Korea FTA*, available at: [http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc\\_145203.pdf](http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145203.pdf)
- Fliess, B., F. Gonzales, J. Kim and R. Schonfeld. (2010), "The Use of International Standards in Technical Regulation", *OECD Trade Policy Papers*, No. 102, OECD Publishing: Paris.
- Guerin, Selen Sarisooy et al. (2007) *A Qualitative Analysis of a Potential Free Trade Agreement between the European Union and South Korea*, Centre for European Policy Studies (CEPS, Brussels), South Korean Institute for International and Economic Policy (KIEP), Seoul.
- Hakwon Sunoo, H., (1994) *Twentieth Century Korea*, NANAM Publishing House: Seoul.
- Kim, I., J. Lee, D. Mun, J. Hwang, J. Tae Kim and S. Han (2012) 'Securing design checking service for the regulation-based product design', *Computers in Industry*, 63, pp. 586-96.
- Korean-German Chamber of Commerce and Industry (2010) Market Study 'MEM in South Korea' for OSEC Business Network Switzerland, October, Seoul.
- Mattli, W., and T. Büthe (2003) 'Setting International Standards – Technological Rationality or Primacy of Power?', *World Politics*, 56: 1, October, pp.1-42.
- Zuñiga Schroder H. (2009) 'Definition of the Concept "International Standard" in the TBT Agreement,' *Journal of World Trade*, 43:6, pp. 1223-54.

**Appendix** – Classification of Korean Standards (Source: KATS website, Seoul)

Major	Sub-major
Mechanical Engineering	(B) General/Machine elements/Tools/Machine tools/Measuring instrument-physical apparatus/General machinery/Industrial machinery Agricultural machinery/Thermal apparatus-gas apparatus/Metrology-measurement/Industrial automation/Etc.
Electrical & electronic engineering	(C) General/Measurement & testing apparatus/Electrical & electronic materials/cable and conduit/Electrical machines/Electrical appliances Electrical-electronic-communication component/Lamp-lighting devices/Wiring-electrical accessories/Semiconductor-display/Others
Transportation machine	(R) General /Testing and Inspect method/Common parts/Bicycle/Engine and parts/Car bodies-safety/Electric & electronic system-instrument/Repair Tools/Railway /Motorcycle /Etc.



**THE POWER TO KNOW IS THE POWER TO AFFECT. TARIFF CONCESSIONS IN THE FTA BETWEEN THE EU AND KOREA**

BART KERREMANS

JOHAN ADRIAENSEN

YF REYKERS

**1. INTRODUCTION**

The free trade agreement that the European Union and South Korea concluded in 2009 (henceforth FTA KOREU) has entered into force on July 1, 2011 and caught a lot of attention from economic and political scholars. Karel De Gucht, current European Commissioner for trade, labels the FTA KOREU as “the most ambitious trade agreement ever negotiated by the EU” (Commission, 2011).

A large part of the research focused on the geo-political drivers of this trade agreement and noted the deep economic motivations behind this trade agreement. Cooper et al. (2011) label the agreement as a reflection of “(...) the EU and South Korean trade strategies to use FTAs to strengthen economic ties outside their home regions.” Ho-Jin Lee (2010) rightly refers to the agreement as the first of a new generation of free trade agreements pursued by the EU that “fulfils [the EU's 2006 Global Europe Initiative] mandate by guaranteeing access to Korea's dynamic market in which European businesses can compete on equal footings against local and foreign businesses.”

Other studies, looking more into the content and the process of the negotiations, have largely focused on politicized issues. More particularly, attention has been dedicated to the debates about automobiles, services, and chemicals. Elsig and Dupont (2012) for example explained how the European Commission was able to neutralize the concerns of automobile manufacturers as it had garnered support in other areas. Similarly, the importance of the safeguard clause and the involvement of post-Lisbon European Parliament was also emphasized by Horng (2012). Finally, Gabriel Siles-Brügge studied how the European Union's discourse ‘constructed an ideational imperative for liberalisation in „Global Europe”, enabling it to overcome opposition to the EU-Korea FTA’ (2011:1).

While the focus on the (geopolitical) context or the political process that led to the eventual agreement being ratified provides us many insights in how certain policy outcomes came about, it also leaves our knowledge on all other issues negotiated in the agreement obscured. For instance, how can we explain policy outcomes for the many issues in which little politicization or societal mobilization drove the policy process? How to understand the exemption of certain tariff reductions that were not being subject to a heated public debate? It is here, that the functioning of the domestic trade administration becomes more important. Much of the existing IPE literature, however, has focused on either the macro-political dimension or generalized the behaviour of specific mobilized interests in society. Although valuable in and of itself, in order to fully understand policy outcomes, we believe that acquiring an understanding of the functioning of the trade administration can inform and stimulate more valuable insights. This will be discussed in the first part of the paper.

To address the critique formulated, we study one specific aspect of the trade agreement of which we believe that politicization is limited and where the administration plays an important role i.e. the tariff implementation schedules that are included in each FTA. The research design supporting our case is explained in the second section. We basically conduct a sequential mixed method inquiry, From qualitative data-gathering we derive three motivations -or hypotheses if you will- that can explain the outcomes. When testing these hypotheses in a quantitative assessment, we also find deviating results in the schedules of Korea and the European Union. That will be part of the third section of this paper.

In the fourth and final section we present our interpretation of these results and come back to the importance of the functioning of domestic trade administrations for trade policy outcomes. Besides drawing some lessons for the scholarship on the political economy of trade, we also derive a number of policy recommendations in the conclusion

## **2. INTRODUCING THE ADMINISTRATION IN THE POLITICAL ECONOMY OF TRADE**

Negotiating a free trade agreement is not always easy. Different economic sectors may be affected differently, and especially the potential losers from trade liberalization will experience strong incentives to mobilize against any concession that could potentially hurt them. As Erixon and Lee-Makiyama (2010: 4) observe succinctly: “(...) all trade agreements create winners and losers, and the political motivation is often aimed at minimising the number of losers.”

International political economy (IPE) has tended to focus disproportionately on these losers. There is a plausible theoretical reason for this: loss aversion and its positive impact on collective action. Indeed, the fear to lose something that one already has is a more powerful incentive for action than the hope to win something in the future (Freund and Özden, 2008; Tovar, 2009). This is certainly the case when the anticipated losses are highly concentrated, meaning that the expected per capita losses are high. Confronted with this assumed impact of loss aversion, IPE scholars have increasingly tried to explain why in spite of loss aversion, massive trade liberalization takes place.

One such explanation questions the presumed link between loss aversion and protectionism (Dür, 2007; Manger, 2009). In these studies, it is stressed that exactly in the context of free trade agreements – particularly the proliferation of such agreements – loss avoidance may be tantamount to trade liberalization. In the case of the FTA KOREU, this loss avoidance played an important role for the European exporters, as they feared that in the absence of a FTA, they would be at a disadvantage to their American counterparts who were awaiting the ratification and implementation of Korea-US FTA.

Notwithstanding the importance of business associations within the trade policy process, there are only a limited range of products and sectors for which mobilization has been observed. For all other products where no peak association exists or where such associations have not been very vocal, the question remains: What determines a policy position in the absence of interest group pressure? This question has partly been dealt with in the literature. In the absence of mobilized interests, the argument is suggested that policymakers are expected

to take decisions that promote aggregate economic welfare, given that they are confronted with the effect of economic growth on voting behaviour (Milner, 1997; Gawande *et al.*, 2009). In the worst case this concern is translated into a preference for liberalization, in the best case it is deduced from discourse by political elite (see e.g. Siles-Brügge, 2011). But in both cases the ideological preferences are considered a default position that explains all choices in the absence of political pressure.

What all these studies tend to have in common is their focus on highly politicized issues and with it, an emphasis on political dynamics as opposed to the more bureaucratic administrative processes that characterize the main part of what trade policy actually consists of.<sup>1</sup> This is understandable, as it concerns the most visible part of the negotiations. Mobilized business associations are vocal in trade discussions and the rhetoric and discourse used by e.g. the Commission is publically available. However, the mere assumption of a liberal bias or the deduction of the ideology from discourse makes abstraction of the policy process as it is developed within the administration. And while it might well be that ideology and discourse is reflected in decisions on less salient issues, it still remains to be assessed whether that really is the case. Similarly, the assumption that policy-makers respond to the aggregated vector of the pressures to which they are exposed is merely that: an assumption. Recently, scholars have tended to pay some attention to this question in their emphasis on the active search that policymakers undertake for societal input on trade or other issues (Woll, 2006). Elsig and Dupont (2012) did so with regard to the FTA KOREU, as they showed how the Commission actively “builds permeability” for industry groups that share its own preferences.

Much of the IPE literature on trade has overlooked these bureaucratic processes that are vital in our understanding of what really matters to explain policy outcomes: How do the trade experts draft negotiating positions? At which stage and to which extent does the ideology of the trade ministry (or commissioner) influence policy outcomes? Through which ways are the business associations actually involved in e.g. the determination of a tariff schedule? Our research into the drivers of tariff commitments in the FTA KOREU is an attempt to address these questions by focusing on the functioning of the administration as a starting point.

### 3. RESEARCH DESIGN

To showcase the merits of an administrative focus in the political economy of trade, we will focus on the schedules in which the reduction of tariffs are articulated. Three reasons guided our decision. First of all, in tariff schedules the liberalization has to be defined on a product-level basis and thus on thousands of individual tariff lines. This implies that we will have both politicized and less politicized issues. The reduction of tariff barriers on goods has been of relatively low salience in the whole FTA KOREU negotiations. However, the debate on car imports indicate that the length of the implementation period has also been sensitive for a number of products<sup>2</sup>. Secondly, each contracting member to a trade agreement has its own tariff reduction schedule. In this case, that implies we can study both the concessions granted by the European Union and those by South-Korea, also enabling a comparative research design. And finally, the determination of tariff schedules represent a simple and

straightforward discussion, as it reflects “traditional trade policy” and not regulatory, behind-the-border, barriers (Young, 2006).

To conduct our research, we will proceed in two stages. In a first stage, we inquire into the administrative process that is followed to draft the tariff schedules. More specifically, we conducted interviews with the responsible expert within DG Trade of the European Commission and a Korean negotiator. Based on these interviews we then derive a number of hypotheses that are tested in a second stage on a quantitative dataset. This allows us to assess the validity and relative importance of the different hypotheses generated. As both the EU and Korea negotiated their own tariff schedule, we also contrast the findings in both cases and inquire into the causes and consequences of such differences.

#### **4. THE TRADE ADMINISTRATIONS AND THE DRAFTING OF THE TARIFF SCHEDULES**

Trade negotiations occur at both an abstract as well as at a specific level. The former corresponds to the scope and time horizon of the liberalization pursued in the agreement, whereas the latter concerns the inclusion of a specific good within the liberalization scheme and its implementation period. In a gentlemen's agreement at the earliest stage of the negotiations, trade statistics (e.g. applicable rates) are exchanged, some targets are determined, and applicable staging categories are being discussed (Interview, DG Trade, August 3, 2011, Brussels). The target refers to both the scope and timing of the liberalization pursued. In GATT art.XXIV:4, reference is made to the idea that substantially all trade should be liberalized in a free trade area or customs union. The EU interprets this “substantially all” to reflect at the least 85% of the tariff lines (reflecting more than 85% of trade value) within a time frame of 10 years. However, in many trade agreements more ambitious goals are pursued.

Based on such a target, negotiators (often in collaboration with associated ministries e.g. agriculture) try to draft a proposal which is then returned to the trading partner. Both sides study each other's offer and make their objections and aspirations be known. It is important to highlight that the largest part of the formulation of the schedule is done at home by the responsible administrations. In both the European and Korean case, this occurs through the use of a general formula using the applicable MFN rates as a factor in determining the appropriate base rates. Both of the administrations, however, put these formula's up for discussion and input is provided by both public and private actors to adjust the offer (Interview, DG Trade, August 3, 2011; Interview Korean diplomat, August 1, 2011, Brussels). In the European case, the member states also play an important role in this process as they ensure that the eventual offer does not hurt their domestic economy excessively. The role of the Commissioner or ministry in this process is rather limited as they are only involved once specific sensitivities need to be resolved either internally or with the trading partner.<sup>3</sup>

Three hypotheses can be generated from the above discussions. First of all, as to the domestic drivers of the chosen staging category, it is important to note that longer implementation periods allow for longer periods in which the producers of competitively weak products can adjust themselves or disappear. Such periods also

allow governments to postpone the political pain associated with such changes. In the tariff schedules of an FTA, this should translate itself in longer implementation periods for products that are comparatively less competitive. Secondly, there is the role of path dependencies. As implementation periods are often assigned as a function of the applicable (MFN) base rate, past decisions on this base rate continue to drive current policy choices. However, assuming that not every product has a rate that matches the strength of the sector, a strong dependency on the base-rate can give rise to sub-optimal decisions. The larger the base rates deviate from the actual competitiveness, the greater the scope for such deficiencies. Through the articulation of interests, the applied implementation period can be adjusted, hence mitigating the threat of inefficient path-dependencies. The more such interests are articulated the better the tariff scheme offer can be made.

Thirdly, through reciprocity and bargaining, adjustments are made to the basic schedule proposed in accordance to foreign demands. This does not occur on each individual tariff line. Based on the interviews conducted, we would expect these dynamics to play only a minor role.

In this paper we want to assess to which extent these three explaining factors explain the concessions granted in the Korean and European schedule. Three explanatory variables are thus of particular interest to us. First of all, the base-rates from which liberalization starts reflect path dependencies. Secondly, the competitiveness of the producers in the home market to assess the degree of calibration and finally, the competitiveness of the negotiating partner in producing or exporting that particular product. The general models tested will therefore take the following form:

$$Stagingcategory = \alpha Baserate + \beta Competitiveness^{HOME} + \delta Competitiveness^{FOREIGN}$$

In what follows, we will go into more detail on the dependent variable and the explanatory variables used to estimate this model.

## 5. DATA ANALYSIS

Our analysis is based on two kinds of data. The first part consists of data included in the schedule of commitments on tariff barriers for goods by respectively the EU and Korea in their FTA, this at the eight-digit level. The second part consists of UN Comtrade data at the six-digit level. The data was extracted through the Hercules Database of the Leuven Centre for Global Governance Studies<sup>4</sup>. We will focus first on the dependent variable.

### *Dependent variable*

Tariff schedules have been used in prior research by Esteveadeordal (2000 ) and Damuri (2009) and has been incorporated in the determination of the 'flexibility' measure incorporated in the database of Dür et al. (2012). In each trade agreement, several staging categories are provided for in the schedule of commitments of the two parties to the agreement. As such, liberalization commitments can be categorized according to the different

lengths of the tariff elimination periods, ranging from the immediate liberalization at the entry into force of the agreement to an implementation period of twenty years. For a limited amount of products, no complete liberalization is provided for. Korea provides for twelve different implementation periods in its schedule of commitments, whereas the EU provides for four of them. Both parties to the agreement provide for an immediate liberalization of more than three-fourths of the tariff lines for which a base rate higher than zero is provided. In the case of Korea, it concerns almost 79% of these tariff lines, in the case of the EU, more than 92%. In case the zero base rates are included, immediate liberalization is granted on about 81% of six-digit tariff lines by Korea and on about 94% of such lines by the EU. Overall, on the bases of the base rates and implementation rates, a picture emerges of two parties who committed themselves to substantive and rapid tariff elimination, although Korea seemed to have been more reluctant here than the EU.

Table 1: Implementation periods applied to tariff barriers in the EU-KOREA FTA

European Union		South-Korea	
Category	Number (percentage)	Category	Number (percentage)
Already Free	2378 (24,5%)	Already Free	1860 (15,6%)
0	6758 (69,5%)	0	7675 (64,5%)
3	275 (2,8%)	2-3	711 (6,0%)
5	275 (2,8%)	5	864 (7,2%)
		6-7	178 (1,4%)
		10	393 (3,2%)
		>10	147 (1,2%)
No Elimination	39 (0,4%)	No Elimination	45 (0,37%)
TOTAL	9721 (100%)		11873 (100%)

Source: Authors calculations

The asymmetry between the EU's and Korea's commitments becomes most apparent in the product lines for which trade liberalization has been granted a phasing out period. Differences do not just pertain to the number of different categories identified in both schedules, but also the length of the implementation period and the number of products that fall under such a regime.

#### *Explanatory variables*

Two types of explanatory variables are used in our analysis. The first consists of the base rates and the second of the competitiveness of individual products.

##### A] The Base Rate

As the table above indicates and *t*-tests on the means indicate, average Korean base rates tend to be significantly higher than EU average base rates ( $t = -16,4365$ ,  $p > 0,00001$ ). *F*-tests indicate that they significantly differ in their variances too ( $F = 16,97$ ,  $p > 0,00001$ ), also when zero rates are excluded ( $t = -14,9668$ ,  $F = 14,59$ , both significant at the 0,00001 level). Korea also applies more peak tariffs ( $\geq 15\%$  ad valorem) than the EU does. About 9,1% of its tariff lines represent such tariffs. For the EU, this proportion stands

at 4,5%. The picture with respect to zero rates is the reverse. Whereas zero rates represent almost 16% of Korea's tariff lines, it does represent almost 27% of such lines in the case of the EU.

**Table 2: Base Rates in the EU-KOREA FTA**

BaseRate		Mean	Std. Dev.	Min	Max	N. Obs
-----+-----						
KOR<-EU, with zero		12.7154	51.6710	0	887.4	11709
EU<-KOR, with zero		4.8375	5.2541	0	74.9	8964
KOR<-EU, no zero		15.1152	56.0139	1	887.4	9850
EU<-KOR, no zero		6.6132	5.0985	0.7	74.9	6557

Against higher Korean base rates, one can put the EU's higher reliance on specific tariffs rather than ad valorem tariffs, as the next table indicates. Specific tariffs are less transparent and tend to be higher on average than ad valorem tariffs are.

**Table 3: Specific Rates in the EU-KOREA FTA**

Specific Rates		Obs	Mean	Std. Dev.	Min	Max
-----+-----						
KOR<-EU		8	1.41547	2.6129	.0011	11.10
EU<-KOR		776	58.76907	65.7391	.1700	311.80

(Calculated on the basis of UNCOMTRADE data and the average exchange rate KRW-euro 2007-09, ECB reference exchange rate)

The analysis in the paper here is based on both ad valorem rates and specific rates. The specific ones have been transformed in ad valorem values for that purpose, based on average import volumes and values from the period 2007-2009.

#### B] Competitiveness at home and abroad

With respect to the UN Comtrade data, we have calculated averages over the duration of the negotiations of the KOREU FTA (2007, 2008, and 2009). The data concerns the value of the exports and imports from the EU to Korea and vice versa, the quantity of such exports (in kg, metric tons, litres, gallons, or barrels), and in cases

where relevant, the number of units of such products. All UN Comtrade data used in this paper represents the averages of 2007, 2008, and 2009, so as to reduce the impact of outliers in specific years. The averages of these three years used in our analysis prevents that idiosyncratic factors in one year would affect our competitiveness indices strongly. When working with data at a very disaggregated level, the risks for outliers in the trade data increases. We used the UN Comtrade data for the transformation of specific tariffs into ad valorem rates, and for the computation of the RCAs, the dRCAs and the RCA ratios.

In our regressions, we used several kinds of competitiveness indicators. We started with the Revealed Comparative Advantage (RCA) as developed by Balassa in 1965 which indicates the ratio between the importance of a good or sector in a country's total exports, and the importance of a similar good or sector in overall world exports. When  $RCA > 1$ , the country exports that specific product more than the average country in the world, and hence we consider it to have a comparative advantage in that good or sector. In our analysis, we include therefore, the competitiveness of the EU products in the world market ( $RCA_{EU}$ ) and those of the Korean products ( $RCA_{KOR}$ ) as well.

We also tested the effect of RCA differentials on the tariff elimination rates (as reflected by the implementation periods) in the schedules of commitments. It may indeed be the case that policymakers were not driven by the overall competitiveness of their products in the world market, but rather by the difference between their and their counterpart's competitiveness in the world market. Such a concern may be plausible as the risk of winning or losing in an FTA between the EU and Korea will be first determined by their competitiveness vis-à-vis each other. The differences ( $diffRCA$ ) are calculated on the basis of the ratio between the Korean RCA and the EU RCA.

A more refined measurement of competitiveness may be in order, however. We therefore proceeded with the directional Revealed Comparative Advantage (dRCA) developed by Yeats (1997). It may indeed be the case that political leaders don't focus in the first place on the overall comparative advantage of their products or on the relative competitive standing of their products in the world market – but on the competitiveness of their products in the specific market that they try to open through an FTA. Therefore and in this case,  $dRCA_{EUKOR}$  reflects the competitiveness of a EU product in the Korean market, whereas  $dRCA_{KOREU}$  reflects the competitiveness of a Korean product in the EU market. Directional RCA was calculated through the ratio between the relative importance of a product in the total exports of a country to its trading partner, and the relative importance of such a product's exports in world exports overall.

The focus on the directional revealed comparative advantage is useful for two reasons. As indicated, it allows us first, to focus on the markets of the parties to the agreement. Second, it allows us to distinguish between the role that offensive and defensive interests may have played in the determination of the implementation periods, and thus the tariff elimination rates. An offensive interest of a party (party A) may be detected on the basis of the directional RCA of a product from party A in the market of party B, when we focus on the implementation periods defined in the tariff schedule of party A. The directional RCA of a product from party B in the market of party A may reveal the defensive interests of party A with respect to the products produced in party B, again when we focus on party A's tariff schedule. In our analysis, we include therefore both



dRCA\_EUKOR and dRCA\_KOREU when we study the tariff schedules of both parties. In the case of the EU's schedule, dRCA\_EUKOR represents the EU's potential offensive interests and dRCA\_KOREU its defensive interests. For Korea's schedule, it is dRCA\_KOREU that reflects its offensive interests and dRCA\_EUKOR that does so for its defensive ones.

We calculated the RCA's, the dRCA's, and the RCA differentials (diffRCA) on the basis of UN Comtrade data. A pitfall here, is that this data is only available at the six-digit product level whereas the implementation periods are coded at the eight-digit level giving rise to the risk of ecological fallacy. The next table provides the summary statistics for the different kinds of competitiveness indices.

**Table 4: Competitiveness Indices in the EU-KOREA FTA**

Competitiveness	Obs	Mean	Std. Dev.	Min	Max
-----+-----					
RCA_KOR	9354	.7272	1.7517	5.29e-09	24.988
dRCA_KOREU	8461	.6222	2.1108	7.28e-07	79.474
RCA_EU	9626	1.1431	1.1673	1.39e-04	30.925
dRCA_EUKOR	9626	1.3670	3.2177	0	68.154
diffRCA	9354	2.6848	24.1556	4.68e-09	1529.53

In our models, we also include the base rates. As has been indicated, in most cases, these rates reflect the applied MFN rates at the moment that the agreement was negotiated. It is plausible to assume that these would weigh significantly on the length of the implementation periods. Applied MFN rates reflect the sensitivities – in terms of import-competition – that existed at the moment that these rates were defined, mostly in the Uruguay Round negotiations, but also in decisions on (lower) applied rates later.<sup>5</sup> We include the base rates in our model therefore, in order to control for these sensitivities and to disentangle them from competitiveness sensitivities that existed at the moment of the FTA negotiations between the EU and South Korea. We exclude from our analyses the tariff lines where the applied MFN rate already equals zero. We do this in order to avoid confusion between products that were duty-free irrespective of the outcome of the FTA negotiations, and those that became immediately duty-free because of these.

To sum up, we will test the following four models:

$$M1: \text{Impl\_KOR}_i = \beta_0 + \beta_1 \text{baserate}_i + \beta_2 \text{RCA\_KOR}_i + \beta_3 \text{RCA\_EU}_i + \beta_4 \text{RCA\_KOR}_i^2 + \beta_5 \text{diffRCA}_i + \varepsilon_i$$

$$M2: \text{Impl\_KOR}_i = \beta_0 + \beta_1 \text{baserate}_i + \beta_2 \text{dRCA\_KOREU}_i + \beta_3 \text{dRCA\_EUKOR}_i + \beta_4 \text{dRCA\_KOREU}_i^2 + \beta_5 \text{diffRCA}_i + \varepsilon_i$$

$$M3: \text{Impl\_EU}_i = \beta_0 + \beta_1 \text{baserate}_i + \beta_2 \text{RCA\_EU}_i + \beta_3 \text{RCA\_KOR}_i + \beta_4 \text{RCA\_EU}_i^2 + \beta_5 \text{diffRCA}_i + \varepsilon_i$$

$$M4: \text{Impl\_EU}_i = \beta_0 + \beta_1 \text{baserate}_i + \beta_2 \text{dRCA\_EUKOR}_i + \beta_3 \text{dRCA\_KOREU}_i + \beta_4 \text{dRCA\_EUKOR}_i^2 + \beta_5 \text{diffRCA}_i + \varepsilon_i$$

To estimate these models, we made use of the Tobit regression model as our dependent variable is censored to zero. Implementation periods cannot be lower than zero and in addition, a substantial amount of tariff lines face an immediate elimination of their ad valorem duties. A Heckman Selection Model would be appropriate in case the decision to instantly liberalize or not was distinct from the choice of an appropriate implementation period (Sigelman and Zeng, 1999). However, respondents indicated no such process taking place. We also dropped all the products from the analysis that were already liberalized at the time of the negotiation. Including them would be inappropriate as no political decision had to be made for these products. We replicated our estimations by using ordered logit regressions. This should allow for a better fit with the categorical nature of our dependent variable. Negotiating partners do not pick the desired implementation period from a continuous domain but restrict their choices to a limited number of periods. What matters is only whether one implementation is longer than another, i.e. where such a period stands in the ranking of implementation periods.

## 6. FINDINGS AND DISCUSSION

For all four models, we report both non-standardized and standardized coefficients, in order to probe for the relative significance of the different factors. Because of the high correlation between RCA and dRCA, and thus multicollinearity problems, separate regressions were conducted for both factors.<sup>6</sup> We also included quadratic terms in order to investigate non-linear effects.

**Table 5: Results of the Tobit Regressions (non-standardized), ad valorem and specific duties**

<i>Variable</i>	<b>Model 1: KOR&lt;-EU</b> Coefficient (Std. Err.)	<b>Model 2: KOR&lt;-EU</b> Coefficient (Std. Err.)	<b>Model 3: EU&lt;-KOR</b> Coefficient (Std. Err.)	<b>Model 4: EU&lt;-KOR</b> Coefficient (Std. Err.)
Constant	-6.9339 (.3240)***	-8.2849 (.3044)***	-12.096 (.8359)***	-20.371 (1.1852)***
baserate	.0453 (.0022)***	.0432 (.0021)***	.0012 (.0002)***	-.0003 (.0010)
RCA_KOR	-.5630 (.1736)***		-.0763 (.2422)	
RCA_EU	-1.2416 (.1437)***		-7.7941 (.6705)***	
RCA_KOR <sup>2</sup>	.0406 (.0113)***			
RCA_EU <sup>2</sup>			.2373 (.0335)***	
diffRCA	.0177 (.0051)***	.0195 (.0044)**	-.0028 (.0135)	.0046 (.0132)
dRCA_KOREU		-.6111 (.1403)***		.2480 (.1620)
dRCA_EUKOR		-.0226 (.0503)		-2.3074 (.3605)***
dRCA_KOREU <sup>2</sup>		.0080 (.0030)**		
dRCA_EUKOR <sup>2</sup>				.0324 (.0081)***
<i>N</i>	8022	7233	5135	4645
<i>Pseudo R</i> <sup>2</sup>	.03	.03	.04	.01
<i>Prob &gt; chi</i> <sup>2</sup>	.00	.00	.00	.00

\* $p < .05$ ; \*\* $p < .01$ ; \*\*\* $p < .001$

Table 5 contains the results of our non-standardized Tobit regression. Four observations can be made here. First, the base rates have a significant impact on the tariff schedules set by Korea. Higher base rates result in longer implementation periods. This was in line with the first hypothesis. Weak products have been shielded more in the past and hence are liberalized at a slower pace. The picture is more blurred in the case of the EU. In model 3 (the model with the RCA's), base rates have a statistically significant impact on implementation, in model 4 (the one with the dRCA's), there is no such impact.

As regard to the second hypothesis, we observe that the length of the implementation periods is significantly affected by the level of competitiveness, and this for both the EU and Korea. Those products that are competitive in the world market are granted shorter implementation periods and vice versa, lower levels of competitiveness result in longer periods. The statistical significance of the squared term in the case of the EU (given the maximum values of the EU's RCA and dRCA) indicates that the impact of the competitiveness on the length of its implementation periods tends to decline as EU products become more competitive in the world market.

Thirdly, the more competitive the EU's products, the shorter Korea's implementation periods tend to be. This is equally the case for the difference between the Korean and the EU's RCA. The larger the ratio between Korean RCA and the one of the EU, the longer Korea's implementation periods tend to be, and vice versa, with a lower ratio (and thus a comparatively stronger EU competitiveness), the periods tend to be shorter as well. This runs counter to what could be expected on the basis of endogenous tariff theory. With stronger competition from the EU, one would expect Korea to engage in more protection, here in the form of longer implementation periods. This is clearly not the case. In the European schedule we could not find such an effect. Here, Korea's competitiveness in the world market (its RCA) does not seem to matter.

One can fourthly observe that both the EU and Korea when setting their implementation periods are affected by the strength of their products in their counterpart's market. In both cases, the impact of this strength declines as their products become more competitive (as indicated by the coefficients for the squared dRCA's, and given the maximum values of the dRCA's). What is remarkable in these models is that the competitiveness of their counterpart's products in their domestic market (Korean products in the EU market, EU products in the Korean market) has no impact on the implementation decisions that both the EU and Korea take. When they look at import-competition, they tend to look at it from the perspective of the world market rather than from each other's markets.

**Table 6: Results of the Tobit Regressions (standardized), ad valorem and specific duties**

<i>Variable</i>	<i>Model 1: KOR&lt;-EU Beta Coefficient</i>	<i>Model 2: KOR&lt;-EU Beta Coefficient</i>	<i>Model 3: EU&lt;-KOR Beta Coefficient</i>	<i>Model 4: EU&lt;-KOR Beta Coefficient</i>
Baserate	.2269***	.2335***	.0920***	-.0107
RCA_KOR	-.0943***		-.0081	
RCA_EU	-.1517***		-.6620***	
RCA_KOR <sup>2</sup>	.1075***			
RCA_EU <sup>2</sup>			.4359***	
diffRCA	.0436***	.0567***	-.0049	.0076
dRCA_KOREU		-.1244***		.0365
dRCA_EUKOR		.0079		-.4076***
dRCA_KOREU <sup>2</sup>		.0670**		
dRCA_EUKOR <sup>2</sup>				.2213***

\* $p < .05$ ; \*\* $p < .01$ ; \*\*\* $p < .001$

From the standardized coefficients in table 6 we can derive some additional findings. They first reveal an important difference between Korea and the EU. Whereas in the Korean case, the base rates are the most important factor for the length of the implementation periods, in the case of the EU, they barely matter.

A second observation is here that the competitiveness of the EU's products is by far the most important factor for the length of the EU's implementation periods. This is the case both for the world competitiveness of the EU's products and the EU's competitiveness in the Korean market specifically. The ordered logit regressions yield about the same patterns as tables 7 and 8 indicate. Table 7 provides the non-standardized estimates whereas table 8 provides the standardized ones.

**Table 7: Results of the Ordered Logit Regressions (non-standardized), ad valorem and specific duties**

<i>Variable</i>	<b>Model 1: KOR&lt;-EU</b> Coefficient (Std. Err.)	<b>Model 2: KOR&lt;-EU</b> Coefficient (Std. Err.)	<b>Model 3: EU&lt;-KOR</b> Coefficient (Std. Err.)	<b>Model 4: EU&lt;-KOR</b> Coefficient (Std. Err.)
baserate	.0161 (.0009)***	.0160 (.0010)***	.0002 (.000)***	-.0000 (.0001)
RCA_KOR	-.0607 (.0345)		.0099 (.0365)	
RCA_EU	-.2823 (.0344)***		-1.2991 (.1107)***	
RCA_KOR <sup>2</sup>	.0017 (.0024)			
RCA_EU <sup>2</sup>			.0386 (.0064)***	
diffRCA	.0049 (.0013)***	.0064 (.0012)***	-.0005 (.0019)	.0006 (.0014)
dRCA_KOREU		-.1403 (.0325)***		.0416 (.0193)*
dRCA_EUKOR		.0021 (.0096)		-.3570 (.0592)***
dRCA_KOREU <sup>2</sup>		.0017 (.0006)**		
dRCA_EUKOR <sup>2</sup>				.0049 (.0013)***
Pseudo R <sup>2</sup>	.06	.06	.06	.02

\* $p < .05$ ; \*\* $p < .01$ ; \*\*\* $p < .001$ **Table 8: Results of the Ordered Logit Regressions (standardized), ad valorem and specific duties**

<i>Variable</i>	<b>Model 1: KOR&lt;-EU</b> Beta Coefficient	<b>Model 2: KOR&lt;-EU</b> Beta Coefficient	<b>Model 3: EU&lt;-KOR</b> Beta Coefficient	<b>Model 4: EU&lt;-KOR</b> Beta Coefficient
baserate	.4032***	.4198***	.1054***	-.0087
RCA_KOR	-.0507		.0071	
RCA_EU	-.1718***		-.7426***	
RCA_KOR <sup>2</sup>	.0227			
RCA_EU <sup>2</sup>			.4776***	
diffRCA	.0607***	.0829***	-.0058	.0079
dRCA_KOREU		-.1381***		.0487
dRCA_EUKOR		-.0036		-.5002***
dRCA_KOREU <sup>2</sup>		.0713**		
dRCA_EUKOR <sup>2</sup>				.2698***
Pseudo R <sup>2</sup>	.06	.06	.06	.02

\* $p < .05$ ; \*\* $p < .01$ ; \*\*\* $p < .001$ 

## 7. CAUSES AND EFFECTS OF THE FINDINGS

So how can we explain these results? Why does the Korean schedule exhibit stronger path dependencies than the European one and how can we explain the impact of the EU's offensive interests? A realist argument might suggest that this is the consequence of differences in market power. This seems unlikely, however. First of all, based on the implementation categories used, it is clear that Korea has used longer phase-out periods. Predominant EU market power would make this unlikely. Second, the fact that the base rates matter much more in the Korean case than in the case of the EU is important. It points at the fact that the EU's tariff schedules are more adapted to the competitiveness of its products *during the negotiation of the FTA with Korea*. The high

coefficient for the EU's RCA in the setting of its own implementation period suggests that the EU adapts its tariff schedules to the competitiveness of its products across the whole collection of tariff lines at the six or eight digit level and not just at the limited number of highly politicized products. To be sure, the estimates also indicate that Korea adapts itself as well to the specificities of the Korea-EU negotiating setting. But the stronger impact of its base rates indicates that its level of adaptation is significantly lower than the one of the EU. In other words, EU tariff schedule setting is calibrated. It is more fine-tuned with respect to the competitiveness of its products.

*Bringing the administration into the limelight*

Our findings thus pertain to the calibration of the implementation schedules. This calibration is largely an internal domestic political process. As a result, we believe a plausible explanation can be found in the functioning of the domestic administration. Recall that for the determination of the appropriate implementation period at the product level, administrations do not always suffer from an oversupply of information. They are in need of a lot of input from both private and public actors to help refine and calibrate the tariff schedule that they offer. The different levels of calibration between the EU and Korea might then be the result of EU policy makers having access to more information on the different domestic interests than does the Korean administration. We identify three reasons to support this explanation. Firstly, due to the multilevel political economic context, the different member states each contribute to the formulation of the EU's position in trade negotiations. The member states are involved in intense coordination with the Commission through the Trade Policy Committee during the trade negotiations. Far from being a system where the member states push the Commission out of a concern for control on what their negotiator is doing, it is a system where the Commission tries to draw the member states into the exchange, concerned as it is about information and about the risk that member states could reject the ultimate agreement whenever they fail to sufficiently realize the need for the concessions that the Commission ultimately made (Kerremans, 2006; Delreux and Kerremans, 2010).

In devising the implementation schedule, the Commission requests information from all the member states on which products require a deviation from the formula suggested (interview, Official DG Trade, August 3<sup>rd</sup> 2011, Brussels). As each member state organizes its own consultation process with business associations and civil society, the Commission can obtain a lot of feedback that allows it to calibrate the schedule in accordance with societal concerns.

The second reason is that the Commission itself has built up a large experience in negotiating trade agreements. Through the different trade agreements preceding the accession of new member states, the negotiation within its immediate neighbourhood and -since the 2000s- its active pursuit of bilateral free trade negotiations across the globe, the EU has obtained by far the most experience in negotiating trade agreements. This experience has led to the development of a good working administrative machinery that provides the formulation of detailed positions on a wide range of topics.

And finally, over time the European Commission has started a number of initiatives to improve the knowledge gathering process. Of particular interest is the Market Access Strategy initiated in 1996 and revised in 2007 to better support the goals as formulated within the 'Global Europe Communication' (EC, 2006) of Peter

Mandelson. Through the launch of the market access database (EC, 1996) the advisory market access committee and local market access teams (EC, 2007) the European Commission has strived to improve the articulation of exporters interests in the identification of market barriers abroad.

This could be contrasted with the Korean administration that has – historically – been viewed as more insulated from societal pressures. That is not to say that it has been completely cut-off from societal input. Research on Korea as a developmental state has indeed indicated that a specific linkage existed between the Korean administration and the large Korean industrial conglomerates, the Chaebol. In this context, the Korean relationship vis-à-vis society has been coined as “embedded autonomy”. In this term, emphasis is put on two elements: the autonomy of a state’s bureaucracy on the one hand, and the existence of institutionalized channels through which it is connected with society on the other hand. As Evans (1995: 12) phrased it: “(...) these [bureaucratic] apparatuses (...) are embedded in a concrete set of social ties that binds the state to society and provides institutionalised channels for the continual negotiation and renegotiation of goals and policies.” And as Rodrik stresses it (2008: 25), these institutional channels “(...) must be designed carefully to ensure that there is a productive dialog between the private sector and the government, information flows adequately in both directions, needs are well identified, policy instruments are appropriately targeted, and self-correcting mechanisms are in place.”

Whereas Evans and others that followed him stress the existence of this “concrete set of social ties”, we stress the possibility that the breadth of such social ties may have an impact on the diversity of information that trade policymakers are able to collect and from there on trade policy outcomes themselves. A challenge in the “embedded autonomy” of public administrations is indeed the risk of capture. For that reason, “embedded autonomy” is supposed to lie “(...) in between the two extremes of strict autonomy, on the one hand, and private capture, on the other” (Rodrik, 2008: 19), and as such to depart from the notion of the “supposedly superior knowledge of one group versus another” (Aiginger, 2007: 314; see also Livesey, 2012: 353). However attractive the concept of “embedded autonomy” may be on paper, it cannot do away with the reality that industrial policy (of which trade policy is part) is often selective in nature in the sense that it generates winners and losers, whether deliberately or not. This is even more the case with trade negotiations, and certainly those that deal with the treatment of individual sectors and products. There, policymakers almost literally engage in the picking of winners and losers, whether willingly or not. In such a negotiation, tariff treatment for individual products needs to be defined, and here, the comparison between South Korea and the European Union becomes interesting, and with it a risky downside of embedded autonomy.

From a theoretical point, two interesting conclusions can then be drawn from our discussion. First, that embedded autonomy as a possible panacea for effective industrial policies is exposed to network bias risks that may result from path dependencies rooted in institutional inertia. One can argue that both the European and the Korean policy-making process experience a similar degree of autonomy and embeddedness. However, the key difference pertains to the breadth of the network through which societal input is solicited. We argue that it is due to this factor that the European implementation schedule is more calibrated to the competitiveness of its products.

Second, that even if the price in terms of efficiency losses may be high in multi-level systems like the one of the EU, the benefits in terms of informational advantages and resulting policy efficacies may be high as well. The ultimate question is then how these benefits weigh up to the losses.

### *Policy recommendations*

A number of policy recommendations can be linked to our findings. First, the management of information and the institutional channels through which such information has to flow is of crucial importance. Political systems can learn in this regard. Both the EU and Korea for example face the challenge of incorporating the interests of Small and Medium Sized Enterprises in their policy process. The threat of capture by big business remains equally prevalent in both political systems. Each has their own experiences, successes and failures in engaging with private actors and an exchanges of best practices. Also inside the EU, the ability of member state administrations to connect to a wide array of industrial sectors varies, and with it the ability of member states to learn from each other. The Lisbon Treaty's provisions on administrative cooperation provide an opportunity here, to exert leadership on cooperation among member state administrations with these informational advances in mind.

Second, a system of informational checks and balances is in order (Altenburg, 2011: 21). This applies particularly to the EU. It may be the case that the Commission as trade negotiator may benefit from the extensive inflow of information that originates in institutionalised ties that several member state administrations have developed within their own societies, the Commission needs to carefully guard its own autonomy with respect to such information. This requires a two-fold approach. The Commission needs to develop and maintain its own informational channels, both within the member states and at the EU-level so as to remain able to assess the bias in the information it gets from the member states. The Commission also needs to play a leadership role with respect to the member states that fail to invest adequately in their own information gathering capabilities. There are two reasons for this. It will reduce the Commission's burden to collect all the information itself, and it will reduce the probability that member state behaviour will exclusively be led by domestic mobilization on a trade agreement and the bad surprise that late mobilization on such agreements may entail for member state behaviour in the Trade Policy Committee or even the Council. If member state representatives understand the full panoply of domestic interests as they are affected by trade negotiations and the concessions the Commission is making in these, there is a lower probability that a domestically politicized issue would hold a member state, and ultimately the EU hostage (Baldwin, 2006).

Thirdly, path dependencies created through the use of formula's or templates carry the inherent risk that decisions are not responsive to a changing economy. This problem is particularly pertinent if such path dependencies go back a substantial period in time. In the case of trade policy, the last great negotiation round in the WTO dates back almost 20 years by now and the economy underwent substantial changes since then. Without discrediting the merits associated with the use of policy short-cuts, it is opportune for policy-makers to occasionally update the raw information on which the path dependencies are scripted.



Overall therefore, information and the breath of information-gathering is crucial for policymakers' ability to calibrate trade policy outcomes to the preferences of more than just the politicized interests at home. The power to know is indeed the power to affect.

## 8. CONCLUSION

In this paper we set out to study the EU-Korea FTA with attention for policy areas that have been less politicized. In doing so, we tried to fill a gap that often exists in the study of trade policies. We did so by linking *all* tariff lines in the EU's and Korea's tariff schedules with the competitiveness of the concerned products, whether the issues were highly or lowly politicized. In doing so, we found that the EU seems to be better able to calibrate its commitments to the interests of both its defensive and offensive industries and to use the resulting moderation in the length of its implementation periods as a bargaining chip in its negotiations with Korea. Korea seemed to be less able to do so. We looked for the explanation in the information gathering system that the administrations in both political systems have at their disposal. The EU's multi-level administrative system, in combination with major Commission efforts to attract continuous input from EU export-oriented industries through its market access strategies and the intensive interactions between the Commission and the member states and among the latter, seemed to have resulted in an EU that is better able to identify the myriad of interests – whether politicized or not – that will be affected by the KOREU FTA. As such, the main conclusion can be indeed, that calibration in this FTA shows that the power to know is the power to affect. For trade policy administrations the message of this conclusion is twofold. First, it shows that the breadth of the social ties between societal interests and trade policymakers – in the first place those active in the administration – is important for the ability of such policymakers to adapt what they include in trade agreements to the characteristics and needs of different sectors in society, also the non-politicized ones. Second, it indicates that even if the existence of a multi-level system like the EU's – where intensive interactions take place among a multitude of players and this on an institutionalised basis – can be burdensome in terms of administrative and coordination costs, it also brings a significant informational advantage for the EU as a whole, particularly in policy areas where most topics remain below the radar of politicised issues.

## Endnotes

---

<sup>1</sup> We conceptualize a product (or issue) to be politicized when private and public actors have expressed their interests in the public arena. In the situation of business associations, this boils down to the voicing of interests through press releases or public statements. Inside lobbying where the trade administration consults or is consulted by business associations, by contrast, will not fall under our conceptualization of politicization.

<sup>2</sup> Whereas tariff commitments are usually determined at the 4-8 digit level, separate categories had to be defined within the FTA KOREU to resolve the car dispute by distinguishing between different type of cars.

<sup>3</sup> One exception though, was Pascal Lamy, who –as commissioner for trade- was also interested in smaller details like the concrete formula being used to derive appropriate staging categories (Interview, DG Trade, August 3, 2011)

<sup>4</sup>

<sup>5</sup> Applied rates are specifically important in the case of Korea, as it is a more intensive user of applied tariffs than the EU (see WTO Trade Policy Review on Korea, 2008). For the EU, such tariffs show up in the agricultural sector only as the EU

negotiated high MFN tariffs in the Uruguay Round (the so-called practice of dirty tariffication) in order to create additional policy space if adaptation of its applied tariffs in response to world market prices would be required.

<sup>6</sup> Spearman's rho of .62 in the case of Korea, and .65 in the case of the EU.

## References

- Aiginger, K. (2007), "Industrial Policy: A Dying Breed or a Re-Emerging Phoenix", in: *Journal of Industry, Competition and Trade*, Vol. 7, n° 3, pp. 297-323
- Altenburg, T. (2011), *Industrial Policy in Developing Countries. Overview and Lessons from Seven Country Cases*, Bonn, Deutsches Institut für Entwicklungspolitik
- Baldwin, Matthew. 2006. "EU trade politics — heaven or hell?" *Journal of European Public Policy* 13(6): 926–942.
- Bawn, K., Thies, M.F. (2003), "A Comparative Theory of Electoral Incentives. Representing the Unorganized under PR, Plurality and Mixed-Member Electoral Systems", in: *Journal of Theoretical Politics*, Vol. 15, n° 1, pp. 5-32
- Brandsen, T., and S. Kim. 2010. "Contextualizing the meaning of public management reforms: a comparison of the Netherlands and South Korea." *International Review of Administrative Sciences* 76(2): 367–386.
- Cooper, W.H., Jurenas, R., Platzer, M.D., Manyin, M.E. (2011), *The EU-South Korea Free Trade Agreement and its Implications for the United States*, Washington DC, Congressional Research Service
- Dai, X (2006), "Dyadic Myth and Monadic Advantage. Conceptualizing the Effect of Democratic Constraints on Trade", in: *Journal of Theoretical Politics*, Vol. 18, n° 3, pp. 267-297
- Damuri, Yose Rizal. 2009. "How Preferential are Preferential Trade Agreements?: Analysis of Product Exclusions in PTAs." *NCCR Working Paper* 2009/30: 1–47.
- Delreux, T., Kerremans, B. (2010), "How Agents Weaken their Principals' Incentives to Control. The Case of EU Negotiators and EU Member States in Multilateral Negotiations", in: *Journal of European Integration*, Vol. 32, n° 4, pp. 357-374
- Ehrlich, S.D. (2007), "Access to Protection: Domestic Institutions and Trade Policy in Democracies", in: *International Organization*, Vol. 61, n° 3, pp. 571-605
- Ehrlich, S.D. (2009a), "How Common is the Common External Tariff? Domestic Influences on European Union Trade Policy", in: *European Union Politics*, Vol. 10, n° 1, pp. 115-141
- Ehrlich, S.D. (2009b), "Constituency Size and Support for Trade Liberalization: An Analysis of Foreign Policy Preferences in Congress", in: *Foreign Policy Analysis*, Vol. 5, pp. 215-232
- Elsig, M., Dupont, C. (2012), "European Union Meets South Korea: Bureaucratic Interests, Exporter Discrimination and the Negotiations of Trade Agreements", in: *Journal of Common Market Studies*, Vol. 50, n° 3, pp. 492-507

Erixon, F., Lee-Makiyama, H. (2010), "Stepping into Asia's Growth Markets: Dispelling Myths about the EU-Korea Free Trade Agreement", in: *ECIPE Policy Briefs*, n° 03/2010

Estevadeordal, Antoni. 2000. "Negotiating Preferential Market Access: The Case of the North American Free Trade Agreement." *Journal of World Trade* 34: 141–166.

European Commission (1996), *The Global Challenge of International Trade : A Market Access Strategy for the European Union*, Luxembourg, Publications Office of the European Union

European Commission (2006), *Global Europe: Competing in the World. A Contribution to the EU's Growth and Jobs Strategy*. Luxembourg, Publications Office of the European Union

European Commission (2007), "Global Europe: A stronger partnership to deliver market access for European exporters". Luxembourg, Publications Office of the European Union

European Commission (2011), *The EU-Korea Free Trade Agreement in Practice*, Luxembourg, Publications Office of the European Union

Evans, P. (1995), *Embedded Autonomy. States and Industrial Transformation*, Princeton, Princeton University Press

Freund, C., Özden, C. (2008), "Trade Policy and Loss Aversion", in: *American Economic Review*, Vol. 98, n° 4, pp. 1675-1691

Gawande, K., Krishna, P., Olarreaga, M. (2009), "What Governments Maximize and Why: The View from Trade", in: *International Organization*, Vol. 63, n° 3, pp. 491-532

Hankla, D.R. (2006), "Party Strength and International Trade: A Cross-National Analysis", in: *Comparative Political Studies*, Vol. 39, n° 9, pp. 1133-1156

Hansen, W.L., Mitchell, N.J., Drope, J.M. (2005), "The Logic of Private and Collective Action", in: *American Journal of Political Science*, Vol. 49, n° 1, pp. 150-167

Horn H., Mavroidis P., Sapir A. (2009). *Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements*. Brussels: Bruegel.

Karol, D. (2007), "Does Constituency Size Affect Elected Officials' Trade Policy Preferences?", in: *Journal of Politics*, Vol. 69, n° 2, pp. 483-494

Kerremans, B. (2006), "Proactive Policy Entrepreneur or Risk-Minimizer? A Principal-Agent Interpretation of the EU's Role in the WTO", in: O. Elgström and M. Smith (eds.), *The European Union's Role in International Politics. Concepts and Analysis*, London, Routledge, pp. 172-188

- Kono, D.Y. (2009), "Market Structure, Electoral Institutions, and Trade Policy", in: *International Studies Quarterly*, Vol. 59, n° 4, pp. 885-90
- Kono D. , Rickard S. (2010), "Do Preferential Trade Agreements Discourage Procurement Discrimination?" Paper presented at the Workshop on The Politics of Preferential Trade Agreements: Theory, Measurement, and Empirical Applications, Princeton University, April 30-May 1.
- Kucik J. (2011), "The Domestic Politics of International Institutional Design: Industry Preferences over Preferential Trade Agreements," unpublished paper.
- Ladewig, J.W. (2006), "Domestic Influences on International Trade Policy: Factor Mobility in the United States, 1963 to 1992", in: *International Organization*, Vol. 60, n° 3, pp. 69-103
- Lee, Ho-Jin (2010), "The EU-Korea FTA: A Boost to Economic Recovery and a Challenge to the U.S.", in: *Brookings Northeast Asia Commentary*, n° 42, October 2010
- Livesey, F. (2012), "Rationales for Industrial Policy based on Industry Maturity", in: *Journal of Industry, Competition and Trade*, Vol. 12, n° 3, pp. 349-363
- Lohmann, S. (2003), "Representative Government and Special Interest Politics", in: *Journal of Theoretical Politics*, Vol. 15, n° 3, pp. 299-319
- Manger, M.S. (2009), *Investing in Protection. The Politics of Preferential Trade Agreements between North and South*, Cambridge, Cambridge University Press
- McGillivray, F. (1997), "Party Discipline as a Determinant of the Endogenous Formation of Tariffs", in: *American Journal of Political Science*, Vol. 41, n° 2, pp. 584-607
- Milner, H.V., *Interests, Institutions, and Information: Domestic Politics and International Relations*, Princeton NJ, Princeton University Press, 1997
- Rodrik, D. (2008), *Normalizing Industrial Policy*, Washington DC, The World Bank, Commission on Growth and Development
- Tovar, P. (2009), "The Effects of Loss Aversion on Trade Policy: Theory and Evidence", in: *Journal of International Economics*, Vol. 78, pp. 154-167
- Yeats, (1997), "Does Mercosur's Trade Performance Raise Concerns About the Effects of Regional Trade Arrangements" *World Bank Policy Research Working Paper 1729*
- Woll, C. (2006), "The Road to External Representation: the European Commission's Activism in International Air Transport", in: *Journal of European Public Policy*, Vol. 13, n° 1, pp. 52-69



**THE EUROPEAN UNION AND THE REPUBLIC OF KOREA:  
REGULATORY APPROACHES TO ARMS TRADE AND CONTROL  
AND TO COUNTERTERRORISM**

RAMON PACHECO PARDO

SHIN DONGMIN

**1. INTRODUCTION**

Arms trade and control and counterterrorism are two areas of central concern to both the European Union (EU) and the Republic of Korea (ROK). The European security strategy 'A secure Europe in a better world', adopted by the European Council on 12 December 2003, and the report on the implementation of the European Security Strategy 'Providing security in a changing world', adopted by the Council on 12 December 2008, highlight proliferation of weapons of mass destruction (WMD) as one of the major threats to the security of the EU. They both refer to arms trafficking as a particularly dangerous risk. The internal security strategy of the EU 'Towards a European security model', adopted by the Council on 26 March 2010, also emphasizes arms trafficking as a threat to the EU.

In the case of the ROK, annual diplomatic white papers published by the Ministry of Foreign Affairs and Trade (MOFAT) emphasize arms controls and the fight against the proliferation of WMD as the key elements of the country's foreign and security policy. Furthermore, domestic legislative actions such as the Foreign Trade Act (enacted in 1986), the Defence Acquisition Programme Act (enacted in 2006) and the related subordinate statutes regulate and control trade and trafficking of arms, including WMD, that can pose a threat to international peace and public safety. Multiple international treaties relating to WMD, conventional weapons and export controls, which the ROK is a member of, have the same juridical effect as the ROK's domestic law and thus complement the regulatory framework related to arms control.

With regards to counterterrorism, the three aforementioned security "white papers" place terrorism at the top of the list of threats to the security of the EU. The 'European Union counter-terrorism strategy', adopted by the Council on 20 November 2005, is the document laying out the counterterrorism strategy of the EU. Related joint action plans, codes of conduct, legislative documents and external action instruments form an increasingly well-developed regulatory framework. Most notable is the 'Council framework decision on combating terrorism' of 13 June 2002 and subsequent amendments.

As for the ROK, the diplomatic white papers referred to above highlight terrorism as a major threat to domestic and international security. Furthermore, a few domestic legislative actions such as the National Anti-Terror Action Directive (enacted in 1982, last amendment in 2012) provide a regulatory framework for the ROK to deal with terrorism. The multiple international treaties related to terrorism which the ROK has joined are also important elements constituting the ROK's legal framework.

The present paper aims at laying out the main features of the regulatory frameworks of both the EU and the ROK in the areas of arms trade and control and counterterrorism. This will serve to compare their respective regulatory frameworks, showing the similarities and differences between them. This will subsequently serve to sketch some recommendations that can form the basis of possible future cooperation between the EU and the ROK.

The paper is organised as follows. In the next section we will offer an overview of relevant literature on regulatory cooperation. The third section will examine the EU's legal framework in relation to arms trade and control and counterterrorism. In the section after we will do the same for the ROK, highlighting some differences with the EU. In the fifth section we will compare the regulatory frameworks of the EU and the ROK. We will then use a very brief concluding section to put an end to this paper.

## **2. REGULATORY COOPERATION**

Regulatory cooperation at the multilateral level has been increasing since the end of the Cold War. New agreements, treaties and institutions have sprung, both within and outside the UN umbrella. Concurrently, less formalised regulatory cooperation through regular consultations and meetings has also grown. Regulatory cooperation today covers a wide range of issue-areas, including but not limited to trade, finance, the environment, intellectual property and aviation. Security matters are also part of this trend towards greater regulatory cooperation.

### *Formal cooperation*

Traditionally, regulatory cooperation among states has been formal and based on international law. The treaties of Augsburg (1555), Westphalia (1648) and Utrecht (1713) are considered the three cornerstones of international law.<sup>1</sup> Thereon developed an increasing number of treaties and, eventually, intergovernmental institutions created to regulate inter-state cooperation. These are based on consent and obligation; states that sign a treaty or join an intergovernmental institution are implicitly consenting to respect the legal documents underpinning said treaty or institution, thus being obliged to abide by them.<sup>2</sup>

The EU essentially is an intergovernmental institution itself. Member states voluntarily decide to join and abide by the treaties that give shape to it. Thus, they exercise formal cooperation at the regional level. And even though the EU is not an state but an intergovernmental institution, it is party to a growing number of treaties and institutions. The greatest example is the enhanced observer status that the EU has had in the United Nations (UN) since 2011. This status gives the EU a number of state-like rights, which means that it can potentially be part of the treaties and institutions falling within the remit of the UN. Therefore, the EU can engage in formal regulatory cooperation with states, including the ROK.

### *Informal cooperation*

Regulatory cooperation among states can also be informal in nature. This cooperation takes the form of transgovernmental networks, or regular transnational interactions among government officials from more than



one state. Already noted in the 1970s, transgovernmentalism has become the “most widespread and effective form of international governance” since the 1990s.<sup>3</sup> Transgovernmental networks are made up of government officials working on a specific issue-area. These officials work on domestic policy problems, but they interact directly with those of other countries rather than indirectly through foreign policy bureaucracies.<sup>4</sup>

Effective transgovernmental networks impact policymaking. They can be divided into four types, according to the degree of cooperation involved and considering that any ceding of sovereignty becomes formal cooperation. These four types are as follows: ‘cross-fertilisation’ or information exchange networks, ‘coordination’ or networks in which regulation is at the state level but national treatment is granted to others, ‘mutual recognition’ or networks in which domestic laws are mutually recognised, and ‘harmonisation’ or standardisation of regulations.<sup>5</sup> As we will see in section 5, the nature of the regulatory approaches to arms trade and control and counterterrorism of the EU and the ROK make informal cooperation of these types more feasible than formal cooperation at this stage.

### 3. EUROPEAN UNION

The legal order of the EU follows a multi-level structure. The EU founding treaties act as the primary legislation and set the constitutional framework for the EU, including its objectives, organisation and *modus operandi*. International agreements with non-member states and international organisations are a second source of EU law. Association, cooperation and trade agreements are the three most notable of these agreements. Secondary legislation, namely legislative acts, non-legislative acts, delegated acts, implementing acts and other acts, are another important source of EU law. These acts are issued by EU institutions when exercising the powers conferred to them by member states. General principles of law and conventions between the member states are the two final layers in the legal order of the EU. They are unwritten law which serve to fill the gaps not covered by written rules.<sup>6</sup> Table 1 summarizes the sources of EU law.

**Table 1. Sources of EU law**

Primary Legislation (Union Treaties, General principles of law)
The EU's international agreements
Secondary Legislation (Legislative acts -Regulations, Directives, Decisions-, Non-legislative acts, Delegated acts - Implementing acts, Other acts - Regulations, Directives, Decisions)
General principles of law
Conventions between the member states (Coreper decisions, International Agreements)

Source: European Union, ‘The legal order of the EU’, 16 December 2010, available at <[http://eur-lex.europa.eu/en/editorial/abc\\_c04\\_r1.htm](http://eur-lex.europa.eu/en/editorial/abc_c04_r1.htm)>, accessed on 30 May 2012.

With regards to secondary legislation, developed by EU institutions and which applies to all or specific member states, there are three binding and two non-binding legal instruments. Regulations, directives and decisions are the three binding instruments. Regulations lay down the same law across all EU member states and are subject to direct applicability, meaning that they confer rights or impose obligations in the same way as national law. Directives aim at harmonisation rather than unification. Thus, directives are binding regarding the objective to be achieved, but member states have leeway to decide how to incorporate the objective into domestic legal systems. EU criteria are used to assess whether national legislation complies with EU law. Decisions are legal acts of individual applicability, meaning that the member state or person(s) to whom it is addressed must be named. They are binding in the same way that regulations are. Recommendations and avis, or opinions, are the two non-binding instruments. They are used to express a view to member states or a person, without placing any legal obligation on the addressee. Recommendations call on a party to behave in a particular way. Opinions are used to give an assessment on a give situation.<sup>7</sup> Table 2 summarizes the secondary legislation instruments of the EU.

**Table 2. Secondary legislation of the EU**

	<b>Addressees</b>	<b>Effects</b>
<b>Regulation</b>	All Member States, natural and legal persons	Directly applicable and binding in their entirety
<b>Directive</b>	All or specific Member States	Binding with respect to the intended result. Directly applicable only under particular circumstances
<b>Decision</b>	Not specified All or specific Member States; specific natural or legal persons	Directly applicable and binding in their entirety
<b>Recommendation</b>	All or specific Member States, other EU bodies, individuals	Not binding
<b>Avis</b>	All or specific Member States, other EU bodies  Not specified	Not binding

Source: European Union, 'The legal order of the EU', 16 December 2010, available at [http://eur-lex.europa.eu/en/editorial/abc\\_c04\\_r1.htm](http://eur-lex.europa.eu/en/editorial/abc_c04_r1.htm), accessed on 30 May 2012.

Resolutions, declarations and actions programmes are secondary legislation instruments used by EU institutions to create and shape the legal order of the EU. Resolutions are jointly issued by the European Council, the Council of the EU (the Council) and the European Parliament. They reflect the jointly held views and intentions of these three institutions on the integration process and specific tasks within and outside the EU. Declarations are issued by all or individual Council members to express an interpretation of the Council's decisions. There are also declarations on the further development of the EU, in which case they are similar to a

resolution. Action programmes are drawn up by the Council and the Commission. They serve to put into practice the general objectives and legislative programmes laid down in the treaties.<sup>8</sup>

### **3.1. LEGAL FRAMEWORK IN RELATION TO ARMS TRADE AND CONTROL**

With regards to primary legislation in relation to arms trade and control, article 69B.1 of the Lisbon Treaty includes illicit arms trafficking as one of the areas of crime in which the Council and the Parliament “may, by means of directives [...] establish minimum rules concerning the definition of criminal offences and sanctions...”, given the cross-border dimension of this activity and the need to combat it on a common basis.<sup>9</sup> This is the only reference to arms trade and control in the Lisbon Treaty.

Three action programmes make up the secondary legislation laying out the general objectives of the EU with regards to arms trade and control. The first two relate to the fight against the proliferation of WMD. They are the ‘EU strategy against proliferation of Weapons of Mass Destruction’, issued by the Council on 10 December 10 2003, and the ‘EU strategy against the proliferation of WMD: Monitoring and enhancing consistent implementation’, issued by the Council on 12 December 2006. The third action programme focuses on small arms and light weapons (SALW). With the title ‘EU strategy to combat illicit accumulation and trafficking of SALW and their ammunition’, it was issued by the Council on 13 January 13 2006.

#### *Weapons of mass destruction*

The ‘EU strategy against proliferation of Weapons of Mass Destruction’ sets a three-pronged strategy for the EU to fight against the proliferation of WMD.<sup>10</sup> The ‘EU strategy against the proliferation of WMD’ re-emphasizes this strategy.<sup>11</sup> The three key policies to fight against the proliferation of WMD are as follows:

1. Building on effective multilateralism
2. Promoting a stable international and regional environment
3. Cooperating closely with partners

To promote the first policy, building on effective multilateralism, the Council emphasizes six instruments. These are the universalisation and strengthening of treaties, agreements and verification arrangements on disarmament and non-proliferation; fostering the role of the UN Security Council; enhancing support to verification regimes; strengthening export control policies and practices with partners in export control regimes; enhancing the security of proliferation-sensitive materials, equipment and expertise in the EU; and strengthening identification, control and interception of illegal trafficking.<sup>12</sup>

With regards to promoting a stable international and regional environment, the second policy from the EU to fight against the proliferation of WMD as outlined in the strategy, the Council focuses on two instruments. These are reinforcing EU cooperative threat reduction programmes; and mainstreaming WMD non-proliferation concerns into the EU's activities and programmes.<sup>13</sup>

Finally, the EU also emphasizes cooperating closely with key partners, which is the third policy to fight against the proliferation of WMD as per the strategy. The two instruments advanced by the EU to enhance this element are ensuring adequate follow-up to bilateral documents on non-proliferation; and ensuring coordination and new joint initiatives.<sup>14</sup>

#### *Implementation actions*

The EU has been active in the implementation of the first two policies outlined in the strategy – building on effective multilateralism and promoting a stable international and regional environment. Implementation of the third policy – close cooperation with partners – has not been as intense.

With regards to the first policy, the Council has adopted several decisions in support of the International Atomic Energy Agency (IAEA), the Biological and Toxic Weapons Convention (BTWC), the Chemical Weapons Convention (CWC), the Comprehensive Nuclear-Test-Ban Treaty (CTBTO), and the Hague Code of Conduct Against Ballistic Missile Proliferation (HCoC). Provision of funds to increase the effectiveness of these organisations and legal instruments has been forthcoming.<sup>15</sup> In addition, the EU has actively supported UN Security Council resolutions on Iran and the Democratic People's Republic of Korea (DPRK) aimed at curtailing the risk of proliferation from both countries.<sup>16</sup>

Implementing the first and second policies established in its strategy simultaneously, the Council has adopted several decisions to strengthen the fight against the proliferation of WMD. Particularly fruitful has been work conducted with Russia. The EU cooperates with Russia in a number of areas. These include support to destroy some of its chemical weapons, to protect its nuclear sites, to retrain former weapons scientists and engineers, or to train personnel working at facilities handling dangerous biological agents. The EU has also supplied equipment for the detection of nuclear and radioactive materials (NRM) at border check points and to enhance export control of dual use items.<sup>17</sup>

Also implementing the first and second policies simultaneously, the Council has adopted several decisions to support non-proliferation of WMD activities in different regions. Joint work with Caucasus and Central Asia countries is common, including the supply of equipment for the detection of nuclear and radioactive materials (NRM) at border check points or training personnel working at facilities handling dangerous biological agents. The Council has also adopted decisions in support of non-proliferation of WMD activities in Southeast Europe, the Mediterranean Basin, North Africa, the Middle East, Southeast Asia and sub-Saharan Africa. Most notably, the EU has worked to improve the capabilities to combat the illicit trafficking and criminal use of chemical, biological, radiological and nuclear materials (CBRN) in several regions.<sup>18</sup>

To support and enhance its fight against the proliferation of WMD, the EU has launched two complementary initiatives aimed at creating permanent networks of experts. Firstly, the EU is in the process of creating a number of CBRN Centres of Excellence located in eight different regions across the world.<sup>19</sup> Secondly, the EU has launched the EU Non-Proliferation Consortium, formed by four European think tanks<sup>20</sup> Together, the two initiatives may serve to bring together scientific and non-scientific experts on non-proliferation of WMD.

### *Small Arms and Light Weapons*

The 'EU strategy to combat illicit accumulation and trafficking of SALW and their ammunition' lays out a five-pronged strategy for the EU to fight against both.<sup>21</sup> This strategy builds on a previous joint action adopted by the Council in 1998 and renewed in 2002.<sup>22</sup> Adopted by the European Council in December 2005, the five key policies to combat the trafficking of SALW are the following:

1. Fostering effective multilateralism
2. Meeting requests by states seeking to reduce their surplus stocks of SALW and their ammunition
3. Promoting the restructuring of industrial sites producing low-cost SALW in Eastern and Southeast Europe
4. Allowing the implementation of measures to address the underlying factors favouring the illegal demand for SALW
5. Supporting the strengthening of the rule of law in unstable countries

### *Implementation actions*

The European Council refers to 38 different instruments to ensure development of these five policies.<sup>23</sup> The EU has been particularly active with regards to a number of these instruments seeking to enhance the role of the UN. It has consistently supported the 2001 UN programme of action to prevent, combat and eradicate the illicit trade in SALW, with a particular emphasis on the problem of their accumulation and trafficking. The EU has also been actively involved in the process to prepare an Arms Trade Treaty. Furthermore, the EU is working towards universalisation and effective implementation of the UN Convention against Transnational Organised Crime (UNTOC).<sup>24</sup>

The Council has also adopted a joint action "in support of the international instrument to enable states to identify and trace, in a timely and reliable manner, illicit small arms and light weapons (SALW)" in the framework of the strategy.<sup>25</sup> Launched by the UN Office for Disarmament Affairs, the International Tracing Instrument seeks to achieve adequate marking of and record-keeping of SALW, as well as to strengthen cooperation in tracing illicit SALW.<sup>26</sup>

Export controls are an instrument emphasized by the EU. The Council has adopted a position "defining common rules governing control of exports of military technology and equipment", including SALW.<sup>27</sup> The common position is directed towards member states. Nonetheless, the Council has also adopted a decision to promote this position among third countries.<sup>28</sup> Thus, the EU is working to promote arms export controls among member states in Eastern Europe, countries in the Caucasus, and EU candidate countries.<sup>29</sup>

The Council has endorsed the inclusion of a SALW article in agreements between the EU and third countries. Thus, it has developed a text with three articles to be inserted in international agreements with third countries. The articles stress the threats associated to SALW, the agreement to implement obligations to deal with the illicit trade in SALW, and cooperation to deal with said illicit trade.<sup>30</sup> The EU has negotiated or is negotiating inclusion of these SALW elements in its agreement with several countries.<sup>31</sup>

In addition, and still in regard to work with third countries, SALW issues are part of political dialogues with them and with regional organisations. The EU has also developed specific project assistance to countries in different regions. These projects include demilitarisation efforts in the field of SALW, marking and tracing of SALW, technical assistance or the development of expertise.<sup>32</sup>

### **3.2. LEGAL FRAMEWORK IN RELATION TO COUNTERTERRORISM**

Primary legislation (i.e., the Lisbon Treaty) makes several references to terrorism. Article 28B refers to several tasks which can contribute to the fight against terrorism both inside the EU and in third countries. These include a number of tasks related to disarmament, humanitarian support, peace-keeping or peace-making. Article 61H gives the European Parliament and the Council the power to define administrative measures with regards to capital movements and payments to contribute to the fight against terrorism as well. Under Article 69B, the European Parliament and the Council may also adopt directives to establish a definition of criminal offences and actions in various areas, including terrorism. Meanwhile, article 69H confers Europol the task of supporting the activities of member states in fighting cross-border crimes, including terrorism.

Title VII of the Lisbon Treaty makes several references to terrorism. Under the title 'Solidarity Clause', this section of the treaty enshrines cooperation among member states in case of one suffering a terrorist attack. Article 188.R.1 states that the EU and its member states "shall act jointly in a spirit of solidarity if a member state is the object of a terrorist attack..." To this end, according to article 188.R.1.a the EU and member states should mobilise all their instruments to "prevent" terrorism, "protect democratic institutions and the civilian population" from a terrorist attack, and "assist" a member state in the event of an attack.

Article 188.R.2 asserts that member states shall coordinate among themselves in the Council when a member state requests assistance following a terrorist attack. Article 188.R.3 states that the Council ought to define the arrangements for implementation of the solidarity clause with the assistance of the Political and Solidarity Committee, and after a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. Article 188.R.4 establishes that the European Council shall regularly assess the threats facing the EU. A declaration included in the Lisbon Treaty concerning article 188R clarifies that member states have the right to choose the appropriate means to comply with their solidarity obligation towards other member states.

'The European Union counter-terrorism strategy' is the main piece of secondary legislation explaining the general objectives of the EU with regards to the fight against terrorism.<sup>33</sup> The strategic commitment of the EU is "to combat terrorism globally while respecting human rights", thus making Europe safer.<sup>34</sup> The strategy was adopted on 30 November 2005, and establishes four goals for the EU:

1. To prevent people turning to terrorism
2. To protect citizens and infrastructure
3. To pursue and investigate terrorists within and outside the EU
4. To respond to terrorism by making preparations to minimise the consequences of attacks<sup>35</sup>

The strategy states that member states have the primary responsibility for combating terrorism. However, the strategy highlights the role that the EU can play in strengthening counterterrorism efforts. The European Council can conduct political oversight of the strategy, and the Council, the European Parliament and the Commission can ensure inter-institutional governance.<sup>36</sup> But the EU can also be more actively involved in counterterrorism. As per the strategy, the EU can do so through four policies:

1. Strengthening national capabilities
2. Facilitating European cooperation
3. Developing collective capability
4. Promoting international partnership<sup>37</sup>

These four policies are interconnected and directly linked to the goals outlined above. The strategy establishes 33 different instruments to achieve these goals. There are also 24 priorities that the EU should focus on to combat terrorism.<sup>38</sup> The EU has prioritized attainment of these four goals and use of the four ways outlined in the strategy equally.

#### *Implementation actions*

With regards to the first goal, to prevent people turning to terrorism, the Council introduced a piece of secondary legislation in the form of 'The European Union strategy for combating radicalisation and recruitment to terrorism', adopted on 24 November 2005.<sup>39</sup> The strategy was revised on 14 November 2008.<sup>40</sup> This strategy emphasizes several instruments for the EU to achieve this goal. These are the disruption of the activities of the networks and individuals who draw people into terrorism; ensuring that voices of mainstream opinion prevail over those of extremism; and promoting more vigorously security, justice, democracy and opportunity.<sup>41</sup>

There are different member state-led projects to implement these instruments, projects which mix the four policies pointed out in 'The European Union counter-terrorism strategy'. These projects include 'De-radicalisation – targeted intervention', 'Back on track' (focusing on prison inmates), Community Policing and Prevention of Radicalisation (COPPR), imam-training, 'Check the web' to counter the terrorist use of the internet, 'Clean IT' to counter the illegal use of the internet through a framework of general principles, Radicalisation Awareness Network (RAN), Policy Planners Network on Countering Radicalisation and Polarisation (PPN), and the Alliance of Civilisations.<sup>42</sup>

As for the second goal, to protect citizens and infrastructure, FRONTEX, the European agency in charge of managing cooperation at the EU external borders, is engaged in joint operations, training, risk analysis, research, providing rapid response capability, assisting member states in joint return operations, and information systems and information sharing environment.<sup>43</sup> A European border surveillance system (EUROSUR) exists to support member states to reduce the number of illegal immigrants entering their borders.<sup>44</sup> There are also secondary legislation and projects to ensure control over the visa issuing process (Visa Code and Visa Information System), to protect critical infrastructure (European Programme for Critical Infrastructure Protection and Critical Infrastructure Warning and Information Network), to strengthen cyber, transport, aviation and

maritime security, to protect supply chains and land transport, to ensure the security of explosives (EU action plan on enhancing the security of explosives), and to strengthen nuclear security.<sup>45</sup>

Regarding the third goal, to pursue and investigate terrorists within and outside the EU, there is specific secondary legislation that predates the 2005 counter-terrorism strategy. This is the 'Council framework decision on combating terrorism' of 13 June 2002.<sup>46</sup> The framework decision defines what acts should be considered terrorism. It was amended on 28 November 2008, to deal with specific aspects of prevention such as provocation to commit a terrorist offence, recruitment and training for terrorism.<sup>47</sup>

Secondary legislation and projects related to this third goal include coordination of national structures for counter-terrorism, information sharing on threat/alert levels, data sharing, the 'Prüm decisions' to strengthen cross-border cooperation, Passenger Name Records (PNR) agreements, and an EU-US Agreement on the Terrorist Finance tracking Programme (TFTP). Europol and Eurojust are also deeply involved in pursuing and investigating terrorists, including through joint investigation teams with third countries. On the legislative and judicial front, there is a move towards putting in common member states' criminal law and mutual recognition, recommendations for Eurojust to become more effective, and a roadmap for strengthening procedural rights. There is also ongoing work to reinforce joint efforts in the areas of customs and terrorist financing.<sup>48</sup>

As for the fourth goal, to respond to terrorism by making preparations to minimise the consequences of attacks, the EU is engaged in efforts to provide better support to the victims of terrorism. There is also an action plan on CBRN, which includes a civil protection mechanism.<sup>49</sup>

#### **4. REPUBLIC OF KOREA**

As with the EU, the legislative system of the ROK also follows a multi-level structure.<sup>50</sup> The legislative system consists of the Constitution, acts and subordinate statutes such as presidential decrees and ordinances of the prime minister or ministries, administrative rules and so forth. International treaties and laws are also sources of ROK law. These legal categories carry binding force in hierarchical order. The Constitution has higher levels of legal effect than any act and accordingly any act which infringes on the Constitution cannot be enacted and exercised. This legal hierarchy also applies to the relationship between acts and subordinate statutes. Table 3 summarizes the sources of ROK law.

The Constitution sets legal standards for legislation and amendment of acts and subordinate statutes. Acts are legal norms stipulated by legislative principles approved by the National Assembly. As the main units of legislature, acts are the legal basis for restricting the rights and freedoms of the people in cases where it is deemed necessary to do so for the purpose of safeguarding national security and maintaining public welfare. Subordinate statutes are mainly prescribed by specific administrative powers for their respective jurisdictions. For example, the ROK President is able to issue a presidential decree and its jurisdiction extends over all administrative affairs. Normally subordinate statutes are enacted for the purpose of enforcing acts.



**Table 3. Sources of ROK law**

<b>Class</b>	<b>Legislations</b>	
<b>I</b>	Constitution	
<b>II</b>	Acts, Emergency Executive Orders, Emergency Financial and Economic Executive Orders	Treaties, International Law
<b>III</b>	Presidential Decrees	Rules of the National Assembly, the Supreme Court, the Constitutional Court, National Election Commission
<b>IV</b>	Ordinances of the Prime Minister, Ordinances of Ministries	
<b>V</b>	Administrative Rules (Directives, Regulations, Public Notice, Guidelines, etc.)	Municipal Ordinances, Municipal Rules of Local Governments

Source: Korea Legislature Research Institute, 'Korean Legislative System and Procedures', available at < [http://elaw.klri.re.kr/eng/introduce/intro\\_lawinfo.do](http://elaw.klri.re.kr/eng/introduce/intro_lawinfo.do) >, accessed on 30 May 2012.

With regards to international laws, article 6.1 of the Constitution states that “treaties duly concluded and promulgated under the constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the ROK.”<sup>51</sup> According to this article, international treaties signed by the ROK government and ratified by the National Assembly have the same effect as relevant domestic acts or subordinate statutes. Furthermore, generally recognized rules of international law including international customary laws have legal effects within the legal boundaries of the ROK. Although some treaties require legislative measures to be implemented as domestic acts, the basic principle is that international treaties are directly applied to the ROK legal system.

#### **4.1. LEGAL FRAMEWORK IN RELATION TO ARMS TRADE AND CONTROL**

The MOFAT considers that the concept of arms control means regulating development, deployment and operation of weapon systems through consultations and agreements among related parties. According to the MOFAT, freeze, limitation, banning and reduction of armaments are considered to be the main policies related to arms control.<sup>52</sup> In this respect, the ROK government considers arms control as a general concept which includes the notions of disarmament and control on arms trade.

The diplomatic white paper published annually outlines the ROK government’s basic position on arms control and trade. According to the 2011 diplomatic white paper, the ROK government has contributed to strengthening the international disarmament and non-proliferation regime, especially through following activities:<sup>53</sup>

1. Disarmament and non-proliferation activities related to WMD  
(e.g., hosting of the 2<sup>nd</sup> Nuclear Security Summit, participating in the Non-Proliferation Treaty (NPT) Review Conference and adopting UN Security Council resolutions on the DPRK's nuclear issue)
2. International cooperation to strengthen the global non-proliferation regime  
(e.g., participating in the Proliferation Security Initiative (PSI), the Global Initiative to Combat Nuclear Terrorism (GICNT), and the UN Arms Trade Treaty negotiations)
3. Activities in the field of conventional weapons  
(e.g., participating in programmes related to controlling SALW such as the UN PoA and the ITI)<sup>54</sup>
4. Disarmament and non-proliferation activities within the UN  
(e.g., annually co-hosting the ROK-UN Joint Conference on Disarmament and Non-proliferation)

With regards to the ROK's domestic regulatory system, the issue of arms trade and control is not referred to in the Constitution. Acts, subordinate statutes and relevant international laws mainly lay out the general objectives and binding rules for the ROK on this subject.

*Export Control: The Foreign Trade Act & The Defence Acquisition Programme Act*

The Foreign Trade Act (enacted on 31 December 1986) and related subordinate statutes form the domestic regulatory framework which establishes and exercises the arms control scheme within the ROK's regulatory system.<sup>55</sup> Article 11 of this act states that "the Minister of Knowledge Economy may place a restriction or ban on exportation or importation, if considered necessary for fulfilling the obligations under treaties signed and promulgated pursuant to the constitution of the ROK and generally accepted international laws and regulations, or for protecting biological resources, etc."

In particular, section 3 of this act (Exportation and Importation of Strategic Items) provides a detailed regulation by introducing the concept of 'strategic item'. This act defines an strategic item as goods which the ROK government shall designate and publicly notify for the purpose of "placing a restriction, such as an export permit, in order to maintain international peace and security as well as national security [...] in accordance with the principles of the multilateral international export control system" (article 19). The Enforcement Decree of the Foreign Trade Act (Presidential Decree) prescribes the following international conventions and regimes with regards to arms control:<sup>56</sup>

1. Wassenaar Arrangement (WA)<sup>57</sup>
2. Nuclear Supplier Group (NSG)
3. Missile Technology Control Regime (MTCR)
4. Australia Group (AG)
5. CWC
6. BTWC

The Public Notice on Export and Import of Strategic Items, the subordinate statute of the Foreign Trade Act and the Enforcement Decree of the Foreign Trade Act, provides lists of strategic items such as 'dual use items' and

'munitions'.<sup>58</sup> The notice controls trade of strategic items through providing a detailed standard for classifying items and regulating export licenses of whom exports and imports the strategic items.

The Defence Acquisition Programme Act (enacted on 2 January 2006) also provides legal sources for exercising export control.<sup>59</sup> Article 57 of the act states that "anyone who intends to engage in the business of overseas exporting or intermediation [...] of such trade in major defence materials and national defence science and technology shall report to the Administrator of the Defence Acquisition Program Administration, as prescribed by Presidential Decree" (57.1) and "anyone who intends to export abroad or intermediate the trade of defence materials and defence science and technology, shall obtain permission from the minister of Knowledge Economy [...]" (57.2). Considering the fact that defence materials, science and technology normally include arms and related resources, this act legally enables the ROK government to control arms trade.

#### *Implementation acts*

There are several implementation acts which secure the exercise of international treaties on arms control and trade within the ROK's legal system. Article 1 of the Act on the Control of the Manufacture, Export and Import, etc. of Specific Chemicals and Chemical Agents for the Prohibition of Chemical and Biological Weapons (enactment 16 August 1996) states that "the purpose of this act is to prohibit the manufacture, etc. of chemical and biological weapons and to stipulate necessary matters [...] in order to enforce the CWC and the BTWC and to fulfil other internationally shared obligations with the aim of prohibiting and controlling chemical and biological weapons."<sup>60</sup>

The Nuclear Energy Act (enacted on 1 April 1982) is also considered as an implementation act ensuring the exercise of the relevant international treaties. It defines 'internationally controlled materials' which this act regulates as "being subject to security measures in accordance with the treaty relating to research, development and utilisation of nuclear energy and other international treaties which are prescribed by Ordinance of the Ministry of Education, Science and Technology (article 1.17)."<sup>61</sup> Based on the definition, article 130.3 of the act states that "if the Minister of Education, Science and Technology finds [...] any matters violating this act and the international treaty, h/she may order corrective or complementary measures."<sup>62</sup>

#### *International laws*

International conventions and regimes of which the ROK is a signatory are directly applied to the ROK's domestic legislature system, according to article 6 of the Constitution. The ROK has joined a variety of international treaties with regards to arms control and trade. Table 4 summarizes the major international conventions and regimes in which the ROK participates.

**Table 4. The list of the ROK's participation in international conventions and regimes**

Regime		Entry into force /Establishment	ROK participation
International Convention	NPT	Mar. 1970	Apr. 1975
	CTBTO	Not yet in force (adoption: Sep.	Sep. 1999

		1996)	
	CWC	Apr. 1997	Apr. 1997
	BTWC	Mar. 1975	Jun. 1987
	Convention on Certain Conventional Weapons (CCW)	Dec. 1983	May 2001
<b>International Organisation</b>	IAEA	Jul. 1957	Aug. 1957
	Conference on Disarmament (CD)	Feb. 1984	Jun. 1996
	UN Committee on the Peaceful Uses of Outer Space (COPUOS)	Dec. 1959	Sep. 1994
<b>Export Control Regime</b>	NSG	Jan. 1978	Oct. 1995
	Zangger Committee (ZC)	Aug. 1974	Oct. 1995
	AG	Apr. 1985	Dec. 1996
	MTCR	Apr. 1987	Mar. 2001
	Wassenaar Arrangement (WA)	Jul. 1996	Jul. 1996
<b>Others</b>	HCoC	Feb. 2002	Nov. 2002
	PSI	May 2003	May 2009

Source: MOFAT, '2011 Diplomatic White Paper', Seoul, July 2011.

Although the ROK is a member of most international treaties on conventional weapons, it has not joined the Convention on the prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction (Ottawa Convention) and the Convention on Cluster Munitions due to the security circumstances in the Korean Peninsula.<sup>63</sup> Furthermore, the ROK joined the PSI on 26 May 2009, even though the PSI is not a binding international treaty.<sup>64</sup>

#### 4.2. LEGAL FRAMEWORK IN RELATION TO COUNTERTERRORISM

The ROK government views that terrorism has emerged as a major security threat since the 9/11 attacks challenged the universal values of the international community.<sup>65</sup> The 2011 diplomatic white paper outlines the ROK government's basic position on the issue of counter terrorism as follows: terrorism cannot be tolerated or justified under any circumstances and the ROK government will not compromise or surrender to the threat of terrorism. To effectively counter terrorist threats, the ROK strives to strengthen its counterterrorism capacity, with a focus on:

1. Cooperation with international organisations such as the UN  
(e.g., executing financial sanctions designated by the UN Al-Qaeda and Taliban Sanctions Committee)
2. Bilateral cooperation  
(e.g., counterterrorism consultations with the US, Japan, China, etc.)
3. Strengthening the domestic system  
(e.g., making efforts to organise domestic legal systems)<sup>66</sup>

Furthermore, the ROK government actively participates in the framing and application of counterterrorism regulations and activities at the international level. Although the Constitution does not mention terrorism and comprehensive act-level legislation related to counterterrorism has not been adopted. By now, the National Anti-

Terror Action Directive (Presidential Decree No. 47, enacted on 21 January 1982, last amended on 9 February 2012), the Class III legislation, is considered as the highest level of legislation establishing a government-wide framework against terrorism.<sup>67</sup> In addition, there are acts which partially and indirectly deal with this issue.<sup>68</sup>

#### *Counterterrorism acts and bills*

The Act on Prohibition against the Financing of Terrorism (enacted on 21 December 2007) is an implementation act. Article 1 of this act states that it “provides for matters necessary for prohibiting the financing of terrorism to implement the International Convention for the Suppression of the Financing of Terrorism.”<sup>69</sup> The ROK ratified the convention in 2004. Another act concerning the ROK government’s preparedness and reaction to terrorism is the Framework Act on the Management of Disaster and Safety (enacted on 11 March 2004).<sup>70</sup> Although this act does not refer to the term ‘terror’ or ‘terrorism’, it is considered as being related to counterterrorism because terrorism can be considered one type of disaster.<sup>71</sup> Article 3.6 of the National Guidelines on Anti-Terror Activities states that this act provides a regulatory base for activities to recover from damages caused by terrorism.<sup>72</sup>

In addition, two bills related to counterterrorism were proposed in the National Assembly in 2008. The first bill is the Framework Act on National Anti-Terrorism Activities, which aims to establish a coherent and effective national system against terrorism activities (article 1).<sup>73</sup> The second one is the Act on the National Management of Cyber Crisis, which aims to protect national security and interests through early warning of cyber-attacks and nation-wide prompt reaction to internet crises (article 1).<sup>74</sup> In particular, proposition of the second bill reflects growing domestic demand for a legal framework to counter terrorist attacks in the cyberspace, following the outbreak of ‘the 1.25 Internet Crisis’ that took place in 2003. Although the two bills are yet to be adopted, it is possible to say that they reflect the ROK’s increased interest on the issue of counterterrorism.

#### *The National Anti-Terror Action Directive (Presidential Decree 47)<sup>75</sup>*

As mentioned above, the National Anti-Terror Action Directive functions as the highest level of legislation establishing a government-wide system to fight against terrorism. This directive was first enacted in 1982 and has been amended six times. It defines terrorism as an action which aims to threat national interests and public safety (article 2). To clarify which actions are considered to be terrorism, this directive refers to a variety of international treaties on terrorism.

Sections 2 and 3 of the directive prescribe the establishment of a variety of organisms, including a Counterterrorism Council under the direction of the ROK President, a Permanent Counterterrorism Committee, a Terrorism Information Integration Centre, a Counter-terrorism Operation Headquarter, a Command Centre, anti-terrorism special forces, negotiation teams and so forth. Section 4 introduces a variety of measures related to prevention and responding to terrorism, and section 5 divides roles and authority among organisms such as the National Intelligence Service, the MOFAT, the Ministry of National Defence and so forth. It should be noted that although this directive provides a basis for the ROK government to establish a comprehensive framework on counterterrorism, its legal status is lower than acts. Accordingly, the directive cannot take effect in case there are acts which conflict with it in terms of organisations, budget and so forth.<sup>76</sup>

*International laws*

International conventions and regimes of which the ROK is a signatory are directly applied to the ROK's domestic legislature system according to article 6 of the Constitution. The ROK has joined a variety of counterterrorism international treaties. Table 5 summarizes the major international conventions and regimes in which the ROK participates.

**Table 5. List of the ROK's participation in international conventions and regimes**

No.	Title	Year of signature	Year of deposit of instrument of ratification	Year of deposit of instrument of accession
1	Convention on Offences and Certain Other Acts Committed on Board Aircraft	1965	1971	
2	Convention for the Suppression of Unlawful Seizure of Aircraft			1973
3	Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation			1973
4	Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation	1988	1990	
5	International Convention against the Taking of Hostages			1983
6	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic agents			1983
7	Convention on the Physical Protection of Nuclear Material	1981	1982	
8	Convention on the Marking of Plastic Explosives for the Purpose of Detection	1991	2002	
9	International Convention for the Suppression of Terrorist Bombings	1999	2004	
10	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation			2003
11	Protocol for the Suppression of Unlawful Acts against the safety of Fixed Platforms Located on the Continental Shelf			2003
12	International Convention for the Suppression of the Financing of Terrorism	2001	2004	
13	International Convention for the Suppression of Acts of Nuclear Terrorism	2005	2011	

Source: MOFAT, 'Korea's International Counter Terrorism Cooperation', Seoul, 15 December 2006, available at [http://www.mofat.go.kr/webmodule/htsboard/template/read/korboardread.jsp?typeID=6&boardid=103&seqno=302504&c=TITLE&t=&pagenum=2&tableName=TYPE\\_DATABOARD&pc=&dc=&wc=&lu=&vu=&iu=&du](http://www.mofat.go.kr/webmodule/htsboard/template/read/korboardread.jsp?typeID=6&boardid=103&seqno=302504&c=TITLE&t=&pagenum=2&tableName=TYPE_DATABOARD&pc=&dc=&wc=&lu=&vu=&iu=&du), accessed on 30 May 2012.

## 5. COMPARISON BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF KOREA

The EU and the ROK have a well-developed regulatory framework in the areas of arms trade and control and counterterrorism. These frameworks are evolving through the introduction of new legislation and amendments of existing legislation. Table 6 summarizes the key legal documents thus far adopted by the EU and the ROK in the areas covered in this paper.

**Table 6. Regulatory frameworks of the EU and the ROK (key legislation)**

EU			ROK		
Arms trade and control					
Title	Adoption year	Type	Title	Adoption year	Type
EU strategy against proliferation of WMD	2003	Secondary	Export Control Acts (eg., Foreign Trade Act/ Defense Acquisition Programme Act)	1986, 1989 (relevant amendment), 2006 (last amendment)	Class II
EU strategy against proliferation of WMD: Monitoring and enhancing consistent implementation	2006	Secondary	Implementation Act (eg., Act on the Control of the Manufacture, Export and Import, etc of Specific Chemicals and Chemical Agents for the Prohibition of Chemical and Biological Weapons; Nuclear Energy Act)	1996; 1982	Class II
EU strategy to combat illicit accumulation and trafficking of SALW and their ammunition	2006	Secondary	International Treaties		Class II
Terrorism					
Title	Adoption year	Type	Title	Adoption year	Type
Lisbon Treaty	2009	Primary	National Anti-Terror Action Directive	1982, 2012 (last amendment)	Class III
Council framework decision on combating terrorism	2002, 2008 (amendment)	Secondary	Implementation Acts (eg., Act on Prohibition against the Financing of Terrorism)	2007	Class II
The European Union counter-terrorism strategy	2005	Secondary	Related Act (eg., Framework Act on the Management of Disaster and Safety)	2004	Class II
The European Union strategy for combating radicalisation and recruitment to terrorism	2005	Secondary	International Treaties		Class II

Source: Compiled by the authors.

### **5.1. AREAS OF CONVERGENCE**

An analysis of the regulatory approaches to arms trade and control and counterterrorism pursued by the EU and the ROK reveals four areas of convergence. Three of these areas relate to the nature of the regulatory framework. The other relates to the practicalities of its implementation. The areas of convergence are as follows:

1. Sources of law: Legislation introduced both by the EU and the ROK has mostly been at the second highest level of their respective legislative systems, i.e., just below the Constitution. Whilst some aspects related to terrorism are dealt with in the Lisbon Treaty, the EU has developed its legislative framework via different acts. And even though the primary sources of comprehensive counterterrorism legislation of the ROK is the presidential decree (Class III), Seoul has mostly developed its legislative framework through the adoption of acts and the participation in most international treaties related to terrorism. The main reason seems to be that it is simpler to introduce secondary rather than primary legislation, yet secondary legislation conveys the message of an issue being prioritised.
2. Application of international law: Both the EU and the ROK attach particular importance to the development and universal adoption and application of international law. The ROK has signed and ratified all the major international conventions and regimes related to arms trade and control and counterterrorism. The EU has not been able to do so because only states can be parties to them. But Brussels has adopted decisions supporting many of these regimes and related organisations, and encourages EU member states to become parties to them. This is the result of the similar political nature of the EU and the ROK. Both are democracies respectful of human rights and the rule of law, which explains their will to respect international law.
3. Recent introduction: The regulatory frameworks of the EU and the ROK have been almost in their entirety introduced since the 9/11 terrorist attacks in the United States of America (USA). In the case of the ROK, pre-existing legislation has been amended since said attacks. This is explained by the relatively lower importance given to arms trade and control and counterterrorism at the global level in both of them prior to said attacks, as well as by their close working relationship with the USA since then.
4. Instruments used: Implementation by the EU and the ROK of their respective regulatory frameworks is similar in terms of instruments used. Multilateral cooperation, sanctions, controls, capacity building, or, when necessary, the use of force are some of the instruments being used by Brussels and Seoul to implement their respective regulatory frameworks. The use of similar instruments is logical insofar they tend to be those most democracies prefer to employ.

### **5.2. AREAS OF DIVERGENCE**

The regulatory approaches of the EU and the ROK to arms trade and control and counterterrorism also show some areas of divergence. Differently from the areas of convergence analysed above, the areas in which the EU and the ROK diverge relate to the stage of development of the framework or to the updating and monitoring process. These are the areas of divergence:



1. SALW framework: The EU introduced a strategy to combat illicit accumulation and trafficking of SALW and their ammunition in 2006. In contrast, although the trade of SALW is directly and indirectly controlled by the ROK government through the Foreign Trade Act and its Enforcement Decree, which refers to the WA as one of its legal bases, the ROK is yet to adopt any specific legislation solely targeting the international trade of SALW.<sup>77</sup> Both the EU and the ROK are supportive of international regimes to curb the trafficking of SALW, for example through the proposed Arms Trade Treaty. However, the ROK has not yet led efforts to universalize the curbing of the spread of SALW as the EU has done so, although the ROK has participated in international cooperation on this issue at diverse levels.<sup>78</sup> Thus, it could be argued that the ROK government needs to attach as much importance to SALW as the EU. It can be said that the EU attaches more importance to SALW than the ROK because the latter does not suffer from SALW-related violence to the same extent that some members of the former do. More specifically, violence from gang, mafia and separatist terrorist groups is far less common in the ROK than in the EU.
2. Counterterrorism framework: The EU adopted secondary legislation pertaining counterterrorism shortly after 9/11 and had a well-developed framework by 2005. Thus, whereas the regulatory framework of the ROK relies on amendments to the directive introduced in 1982, the terrorism-related treaties which the ROK has joined, and issue-specific acts, the EU has developed a holistic regulatory framework. The EU has been under the constant threat of terrorism for decades and very notably since 9/11, arguably making it more willing to develop a comprehensive counterterrorism framework.
3. Monitoring and updating process: The EU has been publicly issuing regular reviews of its regulatory frameworks in the areas of arms trade and control and the fight against terrorism, as a means of monitoring implementation and discussing whether updating is necessary. Differently, the ROK domestic regulatory system has not yet articulated specific legislation solely focusing on the monitoring of legislation implementation, although the ROK has been using amendments of existing legislation to update its regulatory framework. Meanwhile, the EU has been more willing to publicly disclose information related to monitoring of existing legislation. Arguably, this could be the result of the EU being a union of sovereign member states, which necessitates all of them to download legislation into their domestic frameworks. As a sovereign state, it is less complicated for the ROK to monitor implementation without the need to make this public.

### **5.3. RECOMMENDATIONS**

Arms trade and control and counterterrorism are important issues. Although the ROK has less experience in handling them than the EU, it has substantial interest in them. As an example, the MOFAT of the ROK has established separate divisions to deal with each of them. Furthermore, the ROK held the 2nd Nuclear Security Summit in 2012, with the participation of most EU member state leaders. Accordingly, the ROK is likely to seek closer cooperation with the EU, which has experience in dealing with the two issues.

Cross-fertilisation is the most feasible form of regulatory cooperation at this stage. As we have seen, the EU and the ROK are capable of reaching harmonisation, as shown by the bilateral free trade agreement that

entered into force in July 2011. As a new generation FTA, regulatory changes will eventually be implemented by both the EU and the ROK. Cross-fertilisation in arms trade and control and counterterrorism could eventually lead to coordination, mutual recognition and even harmonisation. Since the EU and the ROK have a similar regulatory approach to these issue-areas, it is possible to start with cross-fertilisation in the near future while preparing for greater degrees of cooperation.

Nonetheless, there are two limitations to bilateral cooperation. Firstly, the ROK and EU are different types of political entity. Therefore, approaches to arms trade and control and counterterrorism which the legal system of the ROK emphasises and handles as a single, sovereign state can be different from those of the EU, which is a union of states that necessitates cooperation among its members.

Secondly, it is undeniable that the ROK concentrates substantial diplomatic resources on issues related to the DPRK and Northeast Asia, the traditional areas of interest of its foreign policy. Therefore, the issues which the ROK would prefer to focus on can be different from those of the EU, which has already played a substantial role in dealing with arms control and counterterrorism at the global level.

Nonetheless, given the areas of convergence and divergence between the regulatory approaches of the EU and the ROK, there are several recommendations that we think would help both of them to strengthen cooperation. These recommendations are:

1. For both of them to jointly press for universal adoption and application of international law, thus strengthening existing and developing international regimes.
2. For both of them to strengthen joint implementation of their regulatory frameworks, thus increasing efficiency, observing best practices and reducing implementation costs.
3. For the EU to advise the ROK on its SALW framework, thus encouraging Seoul to consider the development of its own.
4. For the EU to advise the ROK on its counterterrorism framework, thus encouraging synergies with the bills that have been proposed in the latter's National Assembly.
5. For both of them to discuss their respective monitoring and updating process, thus increasing efficiency and observing best practices.

More specifically, there is significant potential for the EU and the ROK to initiate cooperation on the following issues in the near future:

1. DPRK: As UN member states, EU countries have joined in sanctions against the DPRK – UNSC resolutions 1695 (2006), 1718 (2006) and 1874 (2009). There is scope for a 'cross fertilisation' network allowing the EU to be informed of the latest developments in the implementation of these sanctions.
2. Iran: The US has requested the support of the ROK in implementing sanctions against Iran, which the EU already implements. There is scope for a 'cross fertilisation' network allowing the ROK to be informed of the latest development in the implementation of these sanctions and alleged links between Iran and the DPRK.
3. Cyberterrorism: As a leading information technology country, the legal system of the ROK related to this area is relatively developed by international standards. Most notably, although yet to be adopted, an Act

on the National Management of Cyber Crisis has been proposed in the ROK. Since cyberterrorism legislation is still in the discussion stage in most states, there is scope even for harmonisation between the ROK, the EU, and other parties.

Regulatory cooperation between the EU and the ROK can be advanced through mechanisms already in existence of relatively simple to initiate:

1. In 2010, the EU and the ROK upgraded their relationship to a strategic partnership. For example, they held a first high level political dialogue in November 2011, involving the EU's Deputy Secretary General for the External Action Service and the ROK's MOFAT Deputy Minister.<sup>79</sup> Furthermore, the ROK and EU held a policy consultation on the DPRK at director-general level in May 2011. In other words, there is an existing mechanism for the EU and the ROK to communicate with each other. Consequently, they can include arms trade and control and counterterrorism as part of the agenda of this mechanism.
2. Furthermore, the ROK has maintained a close cooperative relationship with the Organization for Security and Co-operation in Europe (OSCE) as a member of the OSCE Asian Partners for Co-operation since 1994.<sup>80</sup> The ROK maintains permanent officers charged with matters related to the OSCE in Vienna. Accordingly, the ROK and the EU could deal with arms trade and control and counterterrorism through the OSCE channel.

Two other mechanisms to enhance cooperation that would be relatively simple to implement are as follows:

1. An annual (or half-yearly) policy consultation meeting on arms trade and control and/or the counterterrorism at the director-general level to share experiences, and to develop new areas to cooperate with each other, thus increasing 'cross fertilisation'.
2. The dispatching of ROK working-level officials as observers to a variety of EU arms trade and control and counterterrorism initiatives (e.g., EU cooperation with Central Asian countries or Russia). This could easily lead to 'cross fertilisation' and even closer cooperation as ROK officials better understand the rationale behind the EU's regulatory framework and its implementation.

## **6. CONCLUSION**

Both the EU and the ROK attach great importance to curbing arms trade and terrorism. Thus, they have a well-developed yet constantly evolving regulatory framework to deal with arms trade and control and counterterrorism. These regulatory frameworks are very similar in many, important areas. Nonetheless, there are some differences as well. This suggests that there are both opportunities and possible limitations to mutual cooperation in harmonizing, and perhaps universalising, regulatory frameworks. Given that both the EU and the ROK emphasize multilateral cooperation as one of the cornerstones of their respective frameworks, they have the potential to influence and shape the international regulatory framework if greater convergence between theirs is achieved.

## Endnotes

<sup>1</sup> Reus-Smit, Christian, 'International law', in John Baylis, Steve Smith and Patricia Owens (eds.), *The globalization of world politics: An introduction to international relations* (Oxford: Oxford University Press, 2011), p. 281.

<sup>2</sup> *Ibid.*, p. 283.

<sup>3</sup> Slaughter, Anne-Marie, 'The real new world order', *Foreign Affairs* 76:5 (1997), p. 185.

<sup>4</sup> Keohane, Robert O., and Joseph S. Nye, 'Transgovernmental relations and international organizations', *World Politics* 27:1 (1974), p. 42.

<sup>5</sup> Cheek, Marney L., 'The limits of informal regulatory cooperation in international affairs: A review of the global intellectual property regime', *The George Washington International Law Review* 33:2 (2000), pp. 280-281.

<sup>6</sup> European Union, 'The legal order of the EU', 16 December 2010, available at <[http://eur-lex.europa.eu/en/editorial/abc\\_c04\\_r1.htm](http://eur-lex.europa.eu/en/editorial/abc_c04_r1.htm)>, accessed on 30 May 2012.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> Official Journal of the European Union, 'Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, December 13, 2007', [2007/C 306/01], Brussels, 17 December 2007.

<sup>10</sup> Council of the European Union, 'Fight against the proliferation of weapons of mass destruction – EU strategy against proliferation of Weapons of Mass Destruction', Brussels, 10 December 2003.

<sup>11</sup> Council of the European Union, 'EU strategy against the proliferation of WMD: Monitoring and enhancing consistent implementation', Brussels, 12 December 2006.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> Council of the European Union, 'Eleventh six-monthly progress report on the implementation of the EU strategy against the proliferation of Weapons of Mass Destruction (2011/I)', Brussels, 20 July 2011.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> See European Union, 'CBRN Centres of Excellence: An initiative of the European Union', available at <<http://www.cbrn-coe.eu/>>, accessed on 30 May 2012.

<sup>20</sup> See Foundation pour la Recherche Stratégique, 'EU Non-Proliferation Consortium: The European network of independent non-proliferation think tanks', available at <<http://www.nonproliferation.eu/>>, accessed on 30 May 2012.

<sup>21</sup> Council of the European Union, 'EU strategy to combat illicit accumulation and trafficking of SALW and their ammunition', Brussels, 13 January 2006.

<sup>22</sup> European Union External Action Service, 'The fight against excessive accumulation and illicit trafficking of SALW and their ammunition', available at <<http://www.consilium.europa.eu/eeas/foreign-policy/non-proliferation-disarmament-and-export-control/salw?lang=en>>, accessed on 30 May 2012.

<sup>23</sup> For a detailed list of the 38 elements, see Council of the European Union, 'EU strategy to combat'.

<sup>24</sup> Official Journal of the European Union, 'Twelfth progress report on the implementation of the EU strategy to combat illicit accumulation and trafficking of SALW and their ammunition (2011/II)', [2002/C 66/04], Brussels, 6 March 2012.

<sup>25</sup> Official Journal of the European Union, 'Council Joint Action 2008/113/CFSP of 12 February 2008 in support of the international instrument to enable states to identify and trace, in a timely and reliable manner, illicit small arms and light weapons (SALW) in the framework of the EU strategy to combat the illicit accumulation and trafficking of SALW and their ammunition', [2008/L 40/16], Brussels, 14 February 2008.

<sup>26</sup> *Ibid.*

<sup>27</sup> Official Journal of the European Union, 'Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment', [2008/L 335/99], Brussels, 13 December 2008.

<sup>28</sup> Official Journal of the European Union, 'Council decision 2009/1012/CFSP of 22 December 2009 on support for EU initiatives in order to promote the control of arms exports and the principles and criteria of Common Position 2008/955/CFSP among third parties', [2009/L 348/16], Brussels, 29 December 2009.

<sup>29</sup> Official Journal of the European Union, [2002/C 66/04]

<sup>30</sup> Council of the European Union, 'Council conclusions on the inclusion of a SALW article in agreements between the EU and third countries', Brussels, 17 December 2008.

<sup>31</sup> Official Journal of the European Union, [2002/C 66/04]

<sup>32</sup> *Ibid.*

<sup>33</sup> For a list of the implementation by member states of legislative instruments produced by the EU and the UN, see Council of the European Union, 'EU action plan on combating terrorism', Brussels, 25 November 2011.

<sup>34</sup> Council of the European Union, 'The European Union counter-terrorism strategy', Brussels, 30 November 2005.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> A list of the 33 instruments and 24 priorities can be found at *Council* of the European Union, 'The European Union counter-terrorism strategy'.

<sup>39</sup> Council of the European Union, 'The European Union strategy for combating radicalisation and recruitment to terrorism', Brussels, 24 November 2005.

<sup>40</sup> Council of the European Union, 'Revised EU strategy for combating radicalisation and recruitment to terrorism', Brussels, 14 November 2008.

<sup>41</sup> *Ibid.*

<sup>42</sup> Council of the European Union, 'EU action plan on combating terrorism', Brussels, 9 December 2011.

<sup>43</sup> FRONTEX, 'FRONTEX', available at <<http://frontex.europa.eu/about/mission-and-tasks>>, accessed on 30 May 2012.

<sup>44</sup> Commission of the European Communities, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions examining the creation of a European Border Surveillance System (EUROSRUR)', {SEC(2008) 151}, Brussels, 13 February 2008.

<sup>45</sup> Council of the European Union, 'EU action plan on combating terrorism', Brussels, 9 December 2011.

<sup>46</sup> Official Journal of the European Union, 'Council Framework Decision of 13 June 2002 on combating terrorism', {2002/475/JHA}, Brussels, 22 June 2002.

<sup>47</sup> Official Journal of the European Union, 'Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism', {2008/4919/JHA}, Brussels, 28 November 2002.

<sup>48</sup> Council of the European Union, 'EU action plan on combating terrorism', Brussels, 9 December 2011.

<sup>49</sup> *Ibid.*

<sup>50</sup> The explanation on the ROK's legal system is taken from Korea Legislature Research Institute, 'Korean Legislative System and Procedures', available at <[http://elaw.klri.re.kr/eng/introduce/intro\\_lawinfo.do](http://elaw.klri.re.kr/eng/introduce/intro_lawinfo.do)>, accessed on 30 May 2012.

<sup>51</sup> See Korea Legislature Research Institute, 'Statutes of the Republic of Korea', available at <<http://elaw.klri.re.kr>>, accessed on 30 May 2012.

<sup>52</sup> See MOFAT, 'The Concepts of the Arms Reduction and Arms Control', available at <[http://www.mofat.go.kr/trade/arms/disarmament/basic/index.jsp?menu=m\\_30\\_80\\_10&tabmenu=t\\_2](http://www.mofat.go.kr/trade/arms/disarmament/basic/index.jsp?menu=m_30_80_10&tabmenu=t_2)>, accessed on 30 May 2012.

<sup>53</sup> MOFAT, '2011 Diplomatic White Paper', Seoul, July 2011, pp. 254-62.

<sup>54</sup> UN, 'Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects' (UN PoA), {A/CONF.192/15}, 20 July 2001; UN General Assembly, 'International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons' (ITI), New York, 8 December 2005.

<sup>55</sup> Korea Legislature Research Institute, *op. cit.*

<sup>56</sup> *Ibid.*

<sup>57</sup> Since the 2002 plenary of the WA, when member countries adopted the 'Best Practices Guidelines for Exports of SALW', SALW has been included in the munitions list which the WA controls. Accordingly, it is possible to say that the trade of SALW is directly and indirectly controlled by the ROK government through the Enforcement Decree of the Foreign Trade Act, which refers to the WA as one of its legal bases. See the Wassenaar Arrangement, 'Best Practice Guidelines for Exports of SALW', Vienna, 11-12 December 2002, available at <[http://www.wassenaar.org/docs/best\\_practice\\_salw.htm](http://www.wassenaar.org/docs/best_practice_salw.htm)>, accessed on 30 May 2012; MOFAT, 'Major Issues with Regards to Wassenaar Arrangement', available at <[http://www.mofat.go.kr/webmodule/htsboard/hbd/hbdcread.jsp?typeID=6&boardid=95&seqno=307422&c=&t=&pagenum=1&tableName=TYPE\\_DATABOARD&pc=&dc=&wc=&lu=&vu=&iu=&du=>](http://www.mofat.go.kr/webmodule/htsboard/hbd/hbdcread.jsp?typeID=6&boardid=95&seqno=307422&c=&t=&pagenum=1&tableName=TYPE_DATABOARD&pc=&dc=&wc=&lu=&vu=&iu=&du=>)>, accessed on 30 May 2012.

<sup>58</sup> Although the Foreign Trade Act is the main legal basis of the Public Notice on Export and Import of Strategic Items, specific items have been distributed on relevant laws such as: Nuclear Energy Act: Export and import of NSG Trigger items; Defense Acquisition Act: Export and import of key military items; Inter-Korean Exchange & Cooperation Act: Export and import of strategic items between both Koreas. See Ministry of Knowledge and Economy of the ROK, 'Strategic Trade Information System Overview', available at <[http://www.yestrade.go.kr/portl/html/eng/sub02/s02\\_1.jsp](http://www.yestrade.go.kr/portl/html/eng/sub02/s02_1.jsp)>, accessed on 30 May 2012.

<sup>59</sup> Korea Legislature Research Institute, *op. cit.*

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> MOFAT, *op. cit.* p. 260.

<sup>64</sup> *Ibid.*, pp. 258-9.

<sup>65</sup> *Ibid.*, p. 263.

<sup>66</sup> *Ibid.*, pp. 263-5.

<sup>67</sup> Although Presidential Decree No. 47 has been translated into English in several ways, this paper uses the term employed by the ROK's Diplomatic White Paper. MOFAT, *op. cit.* p. 146.

<sup>68</sup> Lee Man-Jong, 'A study on concerning anti-terrorism legislation major issues and complementary review', *Korean Police Studies Review* 9:1 (2010), pp. 140-1.

---

<sup>69</sup> Korea Legislature Research Institute, op. cit.

<sup>70</sup> Korea Legislature Research Institute, op. cit.

<sup>71</sup> Article 3 of this act defines disaster as any of the following which actually causes or is likely to cause any harm to the lives, physical safety and property of citizens and the State: (a) Disasters [...] caused by other natural phenomena [...], (b) damage [...] such as a fire, collapse, explosion, traffic accidents, chemical, biological and radioactive accidents, and environmental pollution incidents and other similar accidents [...], (c) damage caused by the paralysation of the State's backbone systems, such as energy, communications, transportation, finance, medical treatment, water supply [...].

<sup>72</sup> See Terrorism Information Integration Centre, 'National Guidelines on Anti-Terror Activities', available at <[http://www.tiic.go.kr/service/data/rule.do?method=list&manage\\_cd=002001000](http://www.tiic.go.kr/service/data/rule.do?method=list&manage_cd=002001000)>, accessed on 30 May 2012.

<sup>73</sup> See Terrorism Information Integration Centre, 'The Framework Act on National Anti-Terrorism Activities (Former National Assembly Member Gong Sung-jin)', available at <<http://www.tiic.go.kr/service/common/program/02.pdf>>, accessed on 30 May 2012.

<sup>74</sup> See the Homepage of the Former National Assembly Member Lee Sung-hun, 'The Act on the National Management of Cyber Crisis' available at <<http://www.21sh.or.kr/bbs/editor/uploads/2008/10/30/49091c3f33c20.pdf>>, accessed on 30 May 2012.

<sup>75</sup> Terrorism Information Integration Centre, op. cit.

<sup>76</sup> With regards to the issue of a lack of a comprehensive act related to the fight against terrorism, some analysts argue that the ROK does not yet need this kind of act-level legislature because Northeast Asia, including the ROK and the Korean Peninsula, cannot be considered as a terrorism zone such as the Middle East and Northern Africa.

<sup>77</sup> However, the ROK government de-facto controls the making, sales and possession of SALW within the ROK's legal boundary through the Control of Firearms, Swords, Explosives, etc Act (enacted on 4 August 1984).

<sup>78</sup> As part of the effort to control indiscrete proliferation and illicit trafficking of SALW, the ROK government is submitting progress reports on the UN PoA and the ITI. MOFAT, op. cit, p. 260.

<sup>79</sup> See MOFAT, 'Outcome of the 1st ROK-EU High-Level Political Dialogue', available at <[http://www.mofat.go.kr/webmodule/htsboard/template/read/engreadboard.jsp?typeID=12&boardid=302&seqno=310677&c=&t=&pagenum=1&tableName=TYPE\\_ENGLISH&pc=&dc=&wc=&lu=&vu=&iu=&du=](http://www.mofat.go.kr/webmodule/htsboard/template/read/engreadboard.jsp?typeID=12&boardid=302&seqno=310677&c=&t=&pagenum=1&tableName=TYPE_ENGLISH&pc=&dc=&wc=&lu=&vu=&iu=&du=)>, accessed on 30 September 2012.

<sup>80</sup> See OSCE, 'Partners for Co-operation', available at <<http://www.osce.org/who/84>>, accessed on 30 September 2012.

## **ASSESSING POSSIBILITIES FOR ENHANCED EU-SOUTH KOREA COOPERATION ON CHEMICAL REGULATION**

KATJA BIEDENKOPF

### **1. INTRODUCTION**

This paper investigates chemicals regulation in the European Union (EU) and South Korea. Both jurisdictions have shown an increased level of regulatory activity in recent years with the EU developments preceding the South Korean by only a few years. While the EU engaged in a major overhaul of its regulation, which was adopted in late 2006, South Korea has amended its chemicals law five times between 2004 and 2008 and issued a draft proposal for a major reform in 2011. Both regulatory developments have communalities but also differences. This paper argues that EU chemicals regulation had effects on policy developments in South Korea and it explores opportunities for enhanced, mutually beneficial EU-South Korean cooperation.

Chemicals are an important part of everyday life. Most consumer products from toothpaste to electronics rely on the use of chemicals in their production process or contain chemicals. Given chemicals' near ubiquity, ensuring their safe use and minimising the potential risk that they can pose to humans and the environment is important. Guaranteeing the exploitation of chemicals' benefits while minimising their potential risks has been part of the environmental and industrial policy in most industrialised countries since the 1960s. The EU and South Korean reforms aim at improving previous efforts and bringing chemicals regulation up to the challenges of technological progress and economic developments.

The EU has regulated chemical risks since 1967 when it introduced labelling and classification rules. In 2007, an ambitious and comprehensive reform of European chemicals regulation entered into force – the Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).<sup>1</sup> It goes beyond previous EU and international chemicals policy in its ambition and scope. South Korea has regulated chemicals since 1991, when it introduced the Toxic Chemicals Control Act (TCCA). In 2011, the South Korean Ministry of Environment (MoE) issued a draft proposal for a major revision of its chemicals regulation, entitled Act on the Registration and Evaluation of Chemicals. This legislative proposal would signify a deep reform of South Korean chemicals regulation.

Both the EU REACH Regulation and the South Korean draft legislative proposal have many similarities. When zooming into the details, however, also differences can be detected, too. Nevertheless, the similarities between EU and South Korean chemicals regulation suggest that these are not entirely disconnected processes but rather that there are links, for example, in the form of learning processes and market interdependencies. Section two of this paper compares EU chemicals regulation and the South Korean draft proposal, showing that there are a number of similarities but also some differences. The ensuing section presents the analytical framework for the empirical investigation of the EU's effects South Korean chemicals regulation, which is subject to section four. Section five explores possibilities for enhancing cooperation between the EU and South Korea in



the area of chemicals regulation. Especially since South Korea is currently in the process of revising its chemicals regulation, cooperation at this early stage of the regulatory lifecycle promises great potential for effective cooperation and synergies that could minimise regulatory divergences and inefficiencies.

## **2. EU AND SOUTH KOREAN CHEMICALS REGULATION**

In 2006, the EU adopted the REACH Regulation, which introduces a number of elements that did not exist in previous EU or any other global chemicals regulatory framework. Given these novel elements, the EU REACH Regulation can be considered a pioneering effort. Pioneering is understood as entering uncharted waters by adopting a new approach or new requirements that had not been applied in that way or to that policy area before. This includes the setting of highly ambitious and stringent requirements as well as deregulation and the lowering of standards. The decisive characteristic of pioneering regulation is its novelty in the sense that no other jurisdiction has adopted it before.

In February 2011, the South Korean MoE published a draft proposal for a far-reaching chemicals policy reform and made it subject to public consultation. The proposal is entitled: Act on the Registration and Evaluation of Chemicals,<sup>2</sup> which suggests some similarities with the REACH Regulation. In 2012, MoE issued a revised draft. This law would significantly change current South Korean chemicals regulation. Its scope and requirements are however less ambitious than REACH. The legislative proposal is expected to be submitted to the South Korean National Assembly in late 2012 or early 2013 with anticipated adoption in mid-2013. The Act would enter into force in 2015 (Fallström Mujkic 2012: 12).<sup>3</sup> While the National Assembly could alter the proposal, observers do not expect fundamental changes. Since the likelihood of adoption is very high, this paper focuses on the legislative draft because for an exploration of possibilities for the enhancement of EU-South Korea cooperation on chemical regulation it seems more relevant to focus on the developments expected for the near future rather than on the past. The subsections below compare the EU REACH Regulation and the South Korean draft proposal for an Act on the Registration and Evaluation of Chemicals. They highlight the (draft) regulations' main novel elements.

### **2.1 SHORTCOMINGS OF PRIOR CHEMICALS REGULATORY REGIMES**

EU pre-REACH and current South Korean chemicals policy encountered some shortcomings, which are mainly a lack of data on the hazards and the uses of chemicals, a slow progress of assessing chemicals and regulating risks, and a low degree of innovation activities for safer alternatives to hazardous chemicals. Schwarzman and Wilson (2009: 306) labelled these three shortcomings – that are common not only to pre-REACH and South Korean chemicals laws but can also be observed in other countries such as the United States (US) – the data gap, the safety gap and the technology gap.

One of the reasons for reforming EU chemicals regulation was the lack of hazard and risk data for many chemicals although a number of them had been in commercial use for decades. This shortcoming was the result



of a distinction between existing and new chemicals. Substances newly placed on the EU market after 1981 had to undergo stringent testing requirements. Substances that were already in commercial use in the EU prior to 1981 were considered existing chemicals and could be used without additional testing or registration requirements. Existing chemicals represented about 99% of the volume of all chemicals on the EU market. Only very few of high production volume chemicals had full data sets and for a significant number no data was available. Moreover, the way in which chemicals are used in production processes and products was not known. This made it difficult to assess the actual risk that a chemical can pose. The lack of data has as a result that the environmental and human health implications of a number of chemicals could not or only with difficulties be assessed. Assessing the risks of chemicals that were already in commercial use and regulatory responses addressing potential risks progressed slowly. The degree of innovation activities for safer alternatives to hazardous substances was low because using existing chemicals was less costly and time-consuming (Allanou et al. 2003a, 2003b; Biedenkopf and Park 2012: 783-84; Hansen and Blainey 2006: 270-71; Williams et al. 2009: 554-55).

South Korean chemicals regulation dates back to 1991, when the Toxic Chemicals Control Act (TCCA) was adopted. Like pre-REACH EU regulation, TCCA makes a distinction between existing (in domestic commerce before 1991) and new chemicals (brought into domestic commerce after 1991). Prior to placing new chemicals on the South Korean market, producers must provide the MoE with data on the respective chemical's physical and chemical properties, its toxicity to human health and the environment, its degradability etc. On the basis of this data, the authorities determine whether more data should be generated and whether measures to protect the environment and human health should be introduced. Similar to the pre-REACH regulatory framework, TCCA does not impose the same data requirements on existing chemicals. The authorities have the right to regulate substances that are already in South Korean commerce but as previously in the EU this process is slow. Only 15% of existing chemicals have been evaluated under the TCCA framework.<sup>4</sup> The shortcomings that South Korea faces are thus almost the same as the EU did prior to REACH, namely a lack of hazard and use data for existing chemicals, slow progress in assessing the risks of chemicals and a low degree of innovation for safer alternatives because the use of existing chemicals is less costly and time-consuming than the placing on the market of new chemicals.<sup>5</sup>

## **2.2 SYSTEMATIC AND COMPREHENSIVE APPROACH**

Both REACH and the draft South Korean proposal are based on a systematic approach, composed of three main consecutive steps, that begins with the gathering of data. Both laws include as a second step the evaluation of prioritised chemicals, which can lead to the third step, the imposition of conditions for the continued use of chemicals that were found to pose a certain risk. REACH and the South Korean draft provide for a procedure in which producers<sup>6</sup> must request prior authorisation before using a chemical. As alternative regulatory restriction measures can be adopted.

The REACH Regulation established the Helsinki-based European Chemicals Agency (ECHA) that coordinates and centralises the main parts of the implementation of the Regulation. REACH is composed of

three main stages: registration, evaluation, and authorisation/restriction. By the end of May 2018, all chemicals put on the EU market in quantities over 1 tonne per year per producer must be registered in a central database by submitting defined sets of data to ECHA. Only registered chemicals are permitted on the EU market. In the evaluation stage, EU Member States analyse the data that producers submitted and assess the chemicals' potential risks. As an evaluation result, the use of substances that were found to be of very high concern can be made subjected to authorisation requirements. In this case, producers may only put the respective substance on the EU market if they have received prior authorisation by the authorities to do so. As an alternative to mandated authorisation, EU-wide restrictions of substances can be imposed.

The South Korean draft proposal would require all producers to submit every other year information about the volumes and types of the chemicals that they placed on the South Korean market the previous two years. Based on the submitted and on other available data, the MoE would select and designate substances as subject to evaluation. Producers of these chemicals would be required to submit applications for registration to the MoE. Chemicals that are designated as subject to evaluation could only be placed on the Korean market if they are registered. Based on the registration data, the ministry would conduct hazard and risk evaluations. In the case of a chemical substance being found to pose a risk to human health or the environment, the MoE could designate it as subject to approval. This means that its producer would have to obtain the approval of the authorities prior to placing the chemical on the South Korean market. The MoE could also restrict or prohibit substances that may severely impair human health or the environment.

Both the EU and South Korea take a comprehensive approach by abolishing the distinction between new and existing chemicals that both jurisdictions' previous laws made. In the EU, the cut off year was 1981 and in Korea 1991. Regulatory provisions address all chemical substances in an equal manner, if they fall into the specific categories such as the volume thresholds and, in the case of South Korea, determinations. The South Korean draft still uses the term new substances but it refers to chemicals that are newly placed on the market and have not been marketed before. REACH uses the label phase-in substance. The equal treatment of all chemicals aims at incentivising innovation because it abolishes the prior incentive to use existing chemicals because they were not as stringently regulated as newly developed chemicals and therefore less costly to put on the market (Scott 2009: 57; Williams et al. 2009: 555).

The EU and South Korea include a broad range of chemicals into the scope of their (draft) laws. The REACH registration requirement includes all chemicals that are placed on the EU market in quantities over one tonne per year per producer. It is estimated that this represents about 30,000 chemical substances (European Commission 2007). The South Korean draft foresees two different types of registration requirements. All producers would have to submit basic data on the volume and classification of their substances every other year. There is no minimum volume threshold for this requirement. A South Korean application for registration, which would come closer to the EU registration requirements in terms of the type and extent of data requested, would only have to be submitted by producers of chemicals that are designated as subjects to evaluation and of chemicals that are newly placed on the South Korean market. It is anticipated that the South Korean registration requirement would (initially) cover about 2,000 substances (Fallström Mujkic 2012: 12).<sup>7</sup> The South Korean draft

would introduce the concept of application for a registration, which means that the MoE would have to respond to the producers within 30 days to notify them of the result. The MoE could request additional data from the applicant before issuing a notification of successful registration. In the REACH framework, ECHA evaluates the completeness of the submitted registration files but there is no timeline and only (at least) 5% of the registration dossiers undergo a compliance check. The submission of a registration counts as fulfilling the market entry requirement until ECHA detects deficiencies and requests the registrant to submit the lacking data.

### **2.3 REGISTRATION**

The REACH Regulation and the South Korean draft Act are based on the principle No Data, No Market. In neither of the two are producers allowed to place their chemicals on the market without prior submission of some data. The establishing of a publically accessible database that centralises most of the registration data – apart from some confidential business information – is a central element of the REACH Regulation. The South Korean draft also includes provisions on the disclosure of registration data, with the limitation of withholding some confidential data. The South Korean draft contains the provision that if data has been disclosed in other countries, it cannot be withheld in South Korea. Both laws provide thus for the possibility to protect confidential business information. The amount of registration data is more ambitious in the EU. The South Korean draft would require producers to submit 46 data items for the highest volume category while REACH requests 62 data items for the highest volume category.<sup>8</sup>

Under REACH, producers must register their chemicals in a staged approach by 2018. The deadline for chemicals placed on the EU market in volumes above 1,000 tonnes per year per producer and for some very hazardous substances was December 2010. For volumes above 100 tonnes per year per producer the deadline is December 2013. All chemicals entering the EU market in volumes above one tonne per year per producer must be registered by December 2018. All producers that pre-registered their chemicals between June and December 2008 can benefit from these staged registration deadlines. Alternatively, they must register their chemicals immediately. Pre-registration involved the submission of basic data such as the substance name, company information and tonnage band.

According to the South Korean draft, all chemical producers would have to submit to the MoE production and import volumes of the previous two years as well as information about the category of chemical they manufacture or import. The MoE would select and designate substances as subject to evaluation in accordance with standards that would be established by presidential decrees. The application for registration would include the submission of data on the use of the respective substance, its physicochemical characteristics, its hazards and its categorisation. For higher volumes and substances of great concern the data requirements would be more extensive than for lower volumes. The volume ranges that define the data requirement are the same as in REACH.

Joint submissions by a group of producers that place the same substance on the market are included in both (draft) laws. The REACH Regulation and the South Korean draft foresee the joint submission of registration files when the pre-registration shows that several producers place the same chemical on the respective market.

In the South Korean draft, joint submissions are obligatory. In the REACH Regulation they are optional. REACH allows for the joint submission of registration dossiers by producers when they become member of a Substance Information Exchange Forum (SIEF). The aim of these SIEFs is to avoid duplications in testing, which helps keeping animal testing and costs to a minimum.

## **2.4 RESPONSIBILITIES**

REACH and the South Korean draft shift the responsibility for generating data from the authorities to the producers of chemicals. Previously, for existing chemicals this responsibility lay on the side of public authorities, which was one of the reasons for the slow progress in conducting risks assessments. Insufficient data on hazards and uses of chemicals made it cumbersome for authorities to gather sufficient data to conduct risk assessments (Biedenkopf and Park 2012: 784). REACH requires extensive data sets and requests that producers conduct testing in case the requested data is not available. The South Korean draft takes a similar approach. In both (draft) laws, producers from third countries that are not established in the EU / South Korea and that wish to export chemical substances into the respective market are required to have a legal representative in that particular jurisdiction. This so-called Only Representative is legally responsible for fulfilling the regulatory requirements such as submitting the registration data.

## **2.5 EVALUATION**

Both (draft) laws include evaluation processes in which the registration data is reviewed and assessed with regard to potential risks that would require regulatory responses. The criteria for chemicals to qualify as substances of high concern are virtually the same. Their wording differs only slightly. Yet, only once the South Korean authorities release further details on the specifications of their assessment procedures, would it become clear whether or not there are some more differences.

In the REACH evaluation phase, ECHA checks the registration dossiers for their completeness. More importantly, the competent authorities of the EU Member States jointly evaluate chemicals with regard to potential risks that they might pose to human health or the environment, based on the data submitted in the registration phase. Chemicals that are found to pose such a risk are placed on an annex to the REACH Regulation, which means that they are subject to authorisation. The criteria for substances to be made subject to authorisation are: a) carcinogenic, mutagenic, toxic for reproduction (CMR); b) persistent, bioaccumulative and toxic (PBT); c) very persistent and very bioaccumulative (vPvB); and d) substances, for example with endocrine disrupting properties, that have an equivalent level of concern to those of other substances listed in the previous points.

Similarly, the South Korean MoE would conduct hazard and risk evaluations of chemicals based on the data submitted through registration. In this process, it would be able to request additional data related to the potential risks of the respective chemical substance. Evaluation could lead to the designation of a chemical as subject to approval if it is found to fall into a specified hazard category. These categories are: a) inducing cancer, mutation or impairment of reproductive functions (equivalent to CMR), b) easily building up in humans, fauna and

flora (equivalent to bioaccumulative), c) residing in the environment for extended periods of time (equivalent to persistent), d) suspected of disrupting humans' endocrine systems (equivalent to endocrine disrupting properties), and e) inflicting an equal or greater level of damage than the other categories (equivalent to equivalent level of concern). The South Korean evaluation criteria resemble the ones applied in the REACH framework

## **2.6 PRIORITISATION**

Both laws prioritise chemicals that are produced in large quantities and of high concern. South Korea would designate chemicals as subject to evaluation, which would then have to be registered, in addition to chemicals newly placed on the market, while for all chemicals on the South Korean market basic data would have to be submitted. In this way, South Korea would priorities an estimated 2,000 chemicals for registration. For substances that are manufactured or imported in volumes above 100 tonnes per year, additional risk-related data would have to be submitted. The REACH registration requirement encompasses all chemicals placed on the EU market in quantities above one tonne per year per producer, which is an estimated 30,000 chemicals. Registration prioritises greater volumes and high concern by applying earlier deadlines. The last registration deadline is in December 2018 for substance volumes between one and 100 tonnes. The EU evaluation process is also based on a prioritisation. ECHA draws up a so-called Community Rolling Action Plan with the substances that the Member States must evaluate in the following one to two years.

## **2.7 AUTHORISATION AND RESTRICTION**

Substances that were found to pose a risk to human health or the environment can be made subject to authorisation in either of the two jurisdictions. The South Korean draft uses the term approval. Producers of substances that are subject to those requirements must receive the authorisation/approval by the authorities before placing the substance on the respective market. In both the EU and South Korea, authorisation requirements are use-specific. Both (draft) laws include the provision that if a safer alternative exists or becomes available, authorisation/approval are not granted or phased out. An application for authorisation under REACH must include an analysis of safer alternatives and a substitution plan. As alternative to the authorisation procedure, the REACH Regulation as well as the South Korean draft include the possibility to restrict substances that severely impair human health or the environment through regulatory measures.

## **2.8 SUBSTANCES IN PRODUCTS**

Producers of products that contain certain substances of very high concern must notify this substance to the authorities in both (draft) laws. The South Korean draft stipulates that producers must declare restricted or prohibited substances that are contained in products. The REACH requirements are different in the sense that substances of very high concern, which were placed on an annex and which are considered candidates for authorisation must be notified if they are present in products in a concentration greater than 0.1% of the product. The South Korean provisions would be specified in a presidential decree.

## 2.9 COMMUNICATION IN THE SUPPLY CHAIN

Both the South Korean draft and the REACH Regulation introduce requirements on the communication in the supply chain. In the EU, information about the risks and safe handling of chemicals must be communicated between the different actors in the supply chain to minimise wrong handling and to promote awareness of the appropriate treatment of the different chemicals (Biedenkopf and Park 2012: 786). Information about the ways in which chemicals are used must be communicated to the producer who registers a chemical. The South Korean draft includes requirements on the provision of information to supply chain actors that receive chemicals. This would however only apply to substances designated as subject to evaluation and whose evaluation result the MoE would have communicated.

## 2.10 LEGISLATIVE STRUCTURE

A fundamental EU-South Korea difference is the legislative structure that underlies the respective (draft) chemical regulation. While the consolidated version of the REACH Regulation spans over 800 pages (including annexes), the Korean draft Act comprises about 20 pages. In the EU, a large part of the regulatory requirements is set out in the law itself. Nevertheless, a number of additional technical specifications that were added to annexes and guidance documents contribute to the specification and implementation of the REACH Regulation. The South Korean draft Act would require a number of decrees, ordinances and rules, which are mentioned in the draft Act.

### Similarities

Comprehensive & systematic approach

Successive steps: registration, evaluation, authorisation/restriction

No Data, No Market principle

Abolition of distinction existing and new chemicals  
Tonnage ranges for registration

Publicly available database with registration data, apart from some confidential business information  
Partial shift of responsibilities to producers  
Prioritisation of high volume and high concern substances  
Evaluation criteria: CMR, PBT, vPvB, endocrine

### Differences

South Korean registration would apply to substances "subject to evaluation" (estimated 2,000). EU registration applies to all chemicals above 1 tonne/producer/year (estimated 30,000).

South Korea would require producers to submit data on the volume and name of the chemicals they put on the South Korean market every other year. In the EU registration is a nonrecurring event, only if additional data becomes available must producers submit it.

The South Korean MoE would have to respond to registrations within 30 days. ECHA only conducts compliance checks of about 5% of registration dossiers.

The South Korean draft would require producers to submit 46 data items for the highest volume category; REACH requests 62 data items for the highest volume category.

disrupters and equivalent concern

If safer alternatives for chemicals are available

authorisation / approval is not granted / phased out

Communication in the supply chain requirements

Requirements for substances in products

Foreign producers must appoint an Only

Representative to fulfil their registration and other obligations

Joint registration

Joint registration is mandatory in South Korea and voluntary in the EU.

EU created ECHA, South Korea would implement the Act with existing institutions.

The REACH Regulation comprises about 800 pages (including annexes) while the South Korean draft proposal has about 20 pages. A large number of detailed provisions would be implemented through decrees, ordinances and rules in the South Korean system.

In the EU producers had to pre-register their substances to be able to benefit from the staged registration deadlines. The South Korean proposal does not include pre-registrations.

*Table 9: Similarities and Differences between the REACH Regulation and the 2012 draft Act on the Registration and Evaluation of Chemicals*

### 3. POLICY TRANSFER AND CONVERGENCE

The similarities between EU and South Korean chemicals regulation and the timing of South Korean regulatory activities only a few years after the adoption of REACH suggest an EU-South Korea connection. South Korea amended its TCCA five times in the 2000s,<sup>9</sup> the period when the EU REACH Regulation was in the policy-making process<sup>10</sup> and shortly after its adoption. A significant amendment of the TCCA dates from December 2007, one year after the adoption of REACH and six months after its entry into force. The first proposal for a draft Act on the Registration and Evaluation of Chemicals was issued in 2011, only three and a half years after the entry into force of REACH and only a few months after the first REACH registration deadline. This timing suggests that South Korea could have been inspired by or reacted to developments in the EU, in addition to domestic factors driving chemicals policy reform.

Academic literature suggests that policy in one country can affect policy-making in other countries through different mechanisms that follow different rationales and ontological foundations. For the case of EU-South Korea chemicals regulation, a jointly negotiated agreement on the adoption of the respective regulation and the EU exerting coercive pressure on South Korea can be excluded as explanatory mechanisms. Two groups of mechanisms were identified to bear the potential to explain a possible link between EU and South Korean chemicals policy. One is based on the economic interdependence between the EU and the South Korean market. Through the interweavement of chemicals manufacturing, chemicals-related industries and consumer markets in both jurisdictions, EU policy can have externalities on South Korea. The second group of external

effects is based on the availability of information about and resulting from EU policy, which can lead to learning and emulation by South Korean policy-makers and stakeholders. These two types of external effects are further elaborated in the sections 3.1 and 3.2 below.

South Korean domestic factors are important additional elements to understand the policy output that can result from the EU's external effects. They provide the frame for the type of policy measures that are possible and needed. Factors such as the South Korean industry structure and the capacity of the public authority might require different policy measures than the EU situation does. This can explain EU-South Korean differences in the design and scope of chemicals regulation. The domestic factors are further discussed in section 3.3 below.

### **3.1 ADJUSTMENT AND COMPETITION**

EU policy can have externalities that change the costs and benefits of adopting similar policies in other jurisdictions (Elkins and Simmons 2005: 39-42). Actors in these jurisdictions can respond to the altered situation and adjust their policy positions accordingly. This can lead to increased pressure for the adoption of policy similar to EU policy. Interdependence of markets through trade flows and connected supply chains are the scope condition for transnational effects based on adjustment. When jurisdictions compete with each other to attract internationally mobile capital and business, policy decisions in one of the jurisdictions can make its domestic conditions more or less attractive for investments. Policy decisions in one jurisdiction can thus generate externalities of on another that competes for the same investments (Simmons and Elkins 2004: 173; Simmons et al. 2006: 792-95). This dynamic is generally associated with a race to the bottom in which jurisdictions outcompete each other by scaling down social and environmental standards.

International interdependence can however also lead to the trading up of environmental and health standards. Ambitious environmental and health requirements can create market opportunities for producers that provide compliant products and services. International supply chains and trade can lead to the creation of an incentive for producers to comply with ambitious requirements of a pioneering jurisdiction in order to continue selling products and services on this market (Drezner 2005: 846; Lazer 2001: 476-77). EU policy can thus have a direct effect on extra-EU manufacturers requiring compliance with EU rules for their activities in the EU market. In some cases, this can trigger further-reaching changes. In complex and globally entangled supply chains, manufacturers can decide to implement the stricter EU requirements to their entire production, not only to the production for Europe. Maintaining one single supply chain, production methods and product design can be economically more viable than separate processes because economies of scale can be exploited.

Compliance with ambitious EU requirements can change cost and benefits of complying with similar rules in extra-EU jurisdictions. Since manufacturers made the initial investment in, for example, product design changes and production methods, the costs of compliance with similar or the same rules in other jurisdictions is significantly diminished. The investment that some extra-EU manufacturers made for compliance with EU rules can also motivate them to support ambitious policy in their home jurisdiction in an attempt to level the playing



field with their domestic competitors that are not active on the EU market and therefore not required to make the same compliance investment (Vogel 1997: 562).

The avoidance of regulatory divergence and incompatible regulatory requirements can be a driver for business actors' advocacy in favour of rules similar to the ambitious rules of the jurisdiction that first adopted them. In globalised industry sectors, different requirements increase the transaction costs for companies because they might be required to maintain separate supply chains, product designs and production processes. Global harmonisation of regulatory requirements to minimise transaction cost can be a motivation for business actors to advocate the bringing up of regulatory standards to the level of the first mover jurisdiction (Drezner 2005: 846; Kelemen 2010: 336-39; Kelemen and Vogel 2010: 437-50; Lazer 2001: 447). This could be seen as a pre-emptive measure to avoid the adoption of divergent requirements.

### **3.2 LEARNING AND EMULATION**

EU policy can also be a model and a source of information for actors from extra-EU jurisdictions. They can learn lessons from or emulate EU policy. State and non-state actors can use the experience of another jurisdiction in their own policy-making process. These actors can update their policy positions based on the lessons that they draw from information about EU policy. They can analyse policies and related information such as impact assessments, preparatory studies and data produced as a result of policy measures. Lessons from EU policy and EU data can help reduce uncertainties about different policy options (Gilardi 2012; Levy 1994: 290; Weyland 2009: 392-93, 99-401). Learning can span the entire policy cycle from agenda-setting to policy evaluation or take place at one stage of the cycle (for a description of the policy cycle see Howlett and Ramesh 2003: 11-18).

While learning involves the deeper analysis of policy or data from another jurisdiction, actors can also emulate policy originating abroad. Emulation is the support of policy similar to another jurisdiction's policy based on legitimacy and normative grounds. Extra-EU actors change their policy positions in favour of policy similar to EU policy because they share the same norms or because they perceive the EU and its policy as successful. The former is normative emulation, which occurs when actors adhere to the same norms as the EU policy is based upon. Common norms make extra-EU actors assess EU policy as appropriate (March and Olsen 1989: 160-62). The latter is mimetic emulation, which results from the fit of the perceived achievements of EU policy with the goals of extra-EU actors (Finnemore and Sikkink 1998: 901, 06; Shipan and Volden 2008: 842-43).

### **3.3 DOMESTIC FACTORS**

Some jurisdictions are more receptive to EU effects than others. This can be explained by domestic variables. The overall political agenda, the political majority constellations and the ideologies of relevant actors can make a jurisdiction more or less receptive to effects of EU policy. The more opponents there are to a certain policy, the less likely its adoption becomes (Lavenex and Schimmelfennig 2009: 805; Schimmelfennig and Sedelmeier 2004: 664-65). Culture, norms and traditions that are embedded in a jurisdiction determine what kind of policy is acceptable to the majority. They create a path dependency determining what is considered desirable and acceptable. Formal rules and procedures determine the roles and influence of the different actors involved in

policy-making. They are the rules of the games of politics (Gurowitz 2006: 310-11; March and Olsen 1989: 18; Meyer and Rowan 1977: 341).

Structural factors such as the capacity of the regulator to implement legislation, the structure of domestic industry and the existence of a policy problem play another important role in explaining the design and scope of policy output. Extra-EU actors might be affected by EU policy through adjustment, learning or emulation but structural factors can limit their policy design options. Ambitious policy might require a strong and large government agency to implement and enforce the rules. Complex issues require the technical capacity to cope with them. The structure of the economy and especially of the affected sector might preclude some options because they would be too damaging or a certain policy design options might provide opportunities to strengthen certain areas. The existence a policy problem related to the EU policy can contribute to making a jurisdiction more receptive to EU effects. When a jurisdiction faces a policy problem, it is more likely to adopt a policy that targets the particular issue area (Hays 1996: 634-35; Princen and Rhinard 2006: 1121).

#### **4. LINKS BETWEEN SOUTH KOREAN AND EU CHEMICAL REGULATION**

This section demonstrates that the REACH Regulation affected regulatory developments in South Korea. This results from the empirical investigation based on the analysis of policy documents and statements by South Korean officials as well as interviews with experts that are involved in the process. As a result of market interdependence between the EU and South Korea, the REACH Regulation affected the policy positions of South Korean policy-makers and industry actors. Fostering South Korean industry's competitiveness and growth was linked to the ability to comply with requirements that REACH introduced such as data generation and innovation. South Korean policy-makers also learned from and emulated REACH elements. In parts of this process, industry actors played the role of transmitters of lessons learned. Domestic factors in South Korean provide insights into the reasons for South Korean actors to choose policy design elements that differ from REACH and show that adjustment, learning and emulation are conditioned by such factors. In most cases adjustment, learning and emulation will not lead to the taking over of entire pieces of legislation but rather of elements of it. South Korean domestic factors also provide receptive conditions for effects of the REACH Regulation, for example the existence of a related policy problem and the general trend of strengthening environmental policies.

##### **4.1 ADJUSTMENT AND COMPETITION**

The interdependence of the EU and South Korean chemicals markets is strong. EU-South Korean trade in chemicals has intensified in past years. It is one of the areas in which EU exports to South Korean exceed its imports from the country. Table two below shows, that South Korea ranks 13 in the EU's chemical exports and nine in the EU's chemical imports. The share of EU exports to South Korea as part of the EU's total chemical exports is 2.1%. This relatively small number is nevertheless significant since international trade in chemicals

takes place to a large extent between the EU and the US and the rest is distributed amongst a number of other countries including South Korea. In 2009, 31% of EU chemicals import came from the US and 28% of the EU chemicals exports went to the US. The second biggest export market for EU chemicals was Switzerland with 9% in 2009. This shows that, besides the US, there are a number of countries including South Korea, which have a small but noteworthy export market share for EU chemicals. Additionally, the EU-South Korea chemicals-related trade is expected to grow in size and significance. A 2010 DG Trade study forecasts that the South Korean production of chemicals and manufactured products is to increase and it predicts that the EU will increase its chemicals exports. South Korea exports significant amounts of manufactured goods such as textiles, clothing, cars and electronic equipment to the EU. These are products in whose production chemicals are needed. Tables three and four below show that chemicals and chemicals-related products such as rubber and plastics but also products in whose production process chemicals are important such as electronic equipment and machinery make up large shares of EU-Korea trade (Decreux et al. 2010). The condition for external effects through adjustment and competition, namely market interdependence, is thus given.

Machinery	26.1%	<i>Electronic equipment</i>	36.1%
<b>Chemicals, rubber, plastics</b>	<b>12.6%</b>	<i>Cars, trucks</i>	17.5%
<i>Electronic equipment</i>	7%	Machinery	15.2%
Business services	6.8%	Transport equipment	7.6%
Metals	6.3%	<b>Chemicals, rubber, plastics</b>	<b>5.8%</b>
<i>Cars, trucks</i>	6.2%	<i>Textile</i>	3.8%
Sea transport	6%	Business services	2.9%
Other manufacturing products	5.1%	Metals	2.9%
Air transport	4.5%	Other manufacturing products	1.9%
<i>Leather, clothing</i>	2.5%	Air transport	1.3%
Trade	2.4%	<i>Leather, clothing</i>	1.2%
Other food products	2.2%	Trade	0.8%
Transport equipment	2.2%	Finance	0.8%
<i>Textile</i>	1.8%	Sea transport	0.8%
Other	8.3%	Other	1.4%

Table 10 (left): Main EU Exports to South Korea (source: Decreux et al. 2010)

Table 11 (right): Main South Korean Exports to the EU (source: Decreux et al. 2010)

Product Group	EU Exports			EU Imports			EU Balance		
	Rank	Value	Share of Product in Total	Share of Korea in EU Imports	Rank	Value	Share of Product in Total	Share of Korea in EU Exports	Value
2200 Chemicals	- 13	2,225 Mio €	6.2%	1.5%	9	5,332 Mio €	16.4%	2.1%	3107.1 Mio €

Table 12: Rank of South Korea in EU Trade, 2011 (source: DG Trade 2012)

Considering the market interdependence, South Korean exports to the EU are covered by requirements of the REACH Regulation. REACH Regulation does not only apply to EU chemical producers but also to any other economic actor that places chemicals on the EU market. Chemicals of South Korean origin that are placed on the EU market in quantities over one tonne per year per producer must be registered by 2018 at the latest, depending on their volume. South Korean manufacturers of, for example, electronic products that contain substances of very high concern must notify these substances if they fall into the scope of REACH. South Korean upstream and downstream users of chemicals must comply with at least some of the communication in the supply chain requirements if they are part of a supply chain feeding into the EU market. South Korean producers can potentially be covered by authorisation requirements, if they sell substances into the EU that are identified as requiring authorisation prior to their placing on the EU market. Because of the market interdependence, a number of South Korean manufacturers are affected by REACH requirements and engage in some compliance efforts (Fallström Mujkic 2012: 12).

Since the EU introduced ambitious and comprehensive requirements for chemicals on its market – which set further-reaching obligations than the South Korean TCCA – South Korean producers that are part of supply chains feeding into the EU must engage in REACH compliance efforts. This includes activities that are not part of the obligations under TCCA. Awareness of and compliance with the REACH Regulation is an important aspect for Korean chemical producers because a significant share of EU-South Korea trade is directly or indirectly related to chemicals. South Korean exports of fine chemicals to the EU are expected to grow as a result of the 2011 EU-South Korea Free Trade Agreement (FTA) and as a consequence of South Korean expansion in high-tech areas such as nanotechnology (Guerin et al. 2007: 100). REACH is likely to affect most chemicals-related exports to the EU through one or a number of its requirements. Compliance with REACH is important for a significant number of South Korean companies.<sup>11</sup>

Compliance with REACH and the related competitiveness of South Korean companies has been recognised by the South Korean authorities. The South Korean MoE operates a REACH helpdesk<sup>12</sup> that is

operated by a REACH taskforce team comprising 12 experts and which was established in September 2006. Their task is to raise awareness amongst South Korean companies, to assist them in understanding their compliance obligations and to support them in implementing compliance measures. Additionally, on the MoE website information about the REACH Regulation can be found.<sup>13</sup> The reason for the establishment of the REACH taskforce and the helpdesk that is mentioned first on the helpdesk website is that REACH “will be the strongest trade barrier among international environmental regulations that have been made”.<sup>14</sup> This shows that the South Korean authorities consider REACH compliance an important factor for their domestic industry’s competitiveness.

In recent years, imports of chemical substances into South Korea have increased by 20.4% while chemicals manufacturing decreased by 11.3%. For this reason, South Korean officials are concerned about the competitiveness of their domestic chemicals industry.<sup>15</sup> The increase of chemicals imports is attributed to the “slack regulations on chemical substance”<sup>16</sup> that make it easy to import potentially harmful substances into South Korea while “major trading partners have strengthened management of chemical substance to protect their people and industry”.<sup>17</sup> Boosting South Korean competitiveness is thus connected to the ability of domestic industry to export to the EU and at the same time to keep potentially harmful chemicals out of the country. The REACH Regulation had effects on South Korean officials and industry actors through market interdependence. This led to the adjustment of these actors’ behaviour. Industry engages in adjusting their practices so that they comply with REACH and can continue exporting to the EU. Officials behold the externalities of REACH in terms of competitiveness and as potential trade barriers.<sup>18</sup> REACH led to the adjustment of their policy position so that they advocate reform of South Korean chemicals regulation with the aim of preparing domestic industry for global competition in a context that requires chemicals data, that disfavors risky chemicals and that favours innovation delivering safer alternatives to risky chemicals. The external effects of REACH contributed thus to the agenda-setting process in South Korea leading to the proposal of domestic chemicals regulatory reform.

Adjustment also affected the policy formulation process. The South Korean MoE consulted with industry on the first draft legislative proposal that it issued in 2011. This draft contained a threshold of 0.5 tonnes for applications for registration. In the course of the consultations, industry requested the alignment of the tonnage thresholds with REACH, thus increasing the minimal registration threshold to one tonne and applying the same tonnage bands as in REACH.<sup>19</sup> Market interdependence led thus to the adjustment of South Korean officials’ position with regard to the tonnage threshold for registration steering the policy formulation towards compatibility with REACH.

#### **4.2 LEARNING AND EMULATION**

South Korean officials show interest in learning from the EU’s experience.<sup>20</sup> In an interview, Jee Yoon Lee, Director of the chemicals management division of the South Korean MoE referred to the South Korean authorities’ assessment of REACH and consequent lessons that they drew (Chemical Watch 2011: 25). South Korean officials and European Commission or ECHA officials met a number of times in the past years. For

example, a South Korean delegation visited ECHA in May 2012 to discuss various aspects of the preparatory work for REACH (Fallström Mujkic 2012: 12). They showed interest in the pilot project that the European Commission conducted in 2004 and 2005 to test the implications and implementation of REACH. South Korea started similar pilot projects in the summer of 2012.<sup>21</sup> This can be seen as a lesson learned from the EU's preparation for REACH. South Korea also develops guidance for industry. This is another aspect that seems to have been learned or emulated from REACH. ECHA developed numerous guidance documents for industry. A South Korean delegation that visited ECHA in 2011 was interested in the IT tools that ECHA uses for the registration of chemicals. South Koreans and Europeans discussed the use of the same IT tools. There are also some contacts between EU and South Korean officials at the margins of international meetings such as in the OECD context.<sup>22</sup> The strong interest in exchanging information about REACH on the South Korean side is also expressed in the inception of a working group on chemicals by the FTA that the EU and South Korea concluded in 2011.<sup>23</sup> A first working group meeting was held in April 2012 at which general issues were discussed.<sup>24</sup> Details of the meeting are not publically available.

In addition to contacts between South Korean and European authorities, EU chemicals industry closely follows regulatory developments abroad. The European chemicals industry association Cefic and individual companies engage in the South Korean stakeholder process. They met with South Korean authorities and commented on the draft legislative proposal.<sup>25</sup> A European NGO that focuses on chemicals regulation was involved in some information exchange with South Korean industry and authorities. This dialogue ceased however. NGO-to-NGO cooperation could not be traced.<sup>26</sup> While European industry actors seem to play a noteworthy role in transmitting data to peers and the South Korean authorities, European NGOs seem not involved in contacts with their South Korean peers.

An indication for Korea's openness to cooperation with and learning from other jurisdiction's experiences can be found in TCCA Article 6 (3)5. It stipulates that the Basic Plan for Control of Toxic Chemicals – which the MoE shall formulate – shall include “plans for cooperation with organizations, international organization, etc. relating to toxic chemical control”. There is thus the awareness of the importance of international cooperation as well as the willingness to engage with international actors in the context of the current regulatory framework as well as in the context of regulatory reform.

Strong indications that emulation and learning has taken place can be found in the observation that the 2011 South Korean draft proposal contained provisions on a so-called interim registration. This was a registration with lighter data requirements prior to the actual registration, which is an approach that REACH took with its pre-registration provision. In both the 2011 South Korean draft and the EU, pre-registration is not obligatory but it is required if producers wish to benefit from later registration deadlines. Without pre-registration, immediate registration is required. The 2012 South Korean draft does not contain provisions on interim registration anymore. They were removed because the EU experience was ambiguous. The deadlines under REACH were short, which led to a much larger number of pre-registration than anticipated. Companies pre-registered all chemicals due to insecurity of the need to pre-register and the lack of time to gather data. The REACH pre-registration requirement also has an unintended consequence, which occurs in the case that a company decides

to use a substance that is already in commerce but that it has not used before. Without pre-registration, a full registration would be required immediately as condition prior to using the chemical. EU industry actors communicated this lesson to the South Korean drafters of the legislative proposal.<sup>27</sup> It appears that they engaged in learning from the EU experience since the provision on interim registration is not contained in the revised 2012 draft. Industry actors seem to have been the transmitters of the lesson. This appears to be a case of initial emulation of the EU pre-registration requirement that was revised based on learning.

#### **4.3 DOMESTIC FACTORS**

South Korean domestic factors explain the country's receptiveness to adjustment, learning and emulation as well as the differences in the draft legislative proposal in comparison to REACH. As discussed in subsection 2.1 above, South Korea faces similar problems to the ones that the EU addresses through REACH. These are, in particular, a lack of data, a slow system for assessing existing chemicals and a low degree of innovation activity. For this reason, South Korean policy-makers recognised the need to design a more efficient and preventive chemicals management system, in addition to the considerations based on adjustment and competition.<sup>28</sup> Given the similarity of the shortcomings of the current South Korean chemical law TCCA with the shortcomings of the pre-REACH regulatory framework, it appears logical that the drafters of South Korean chemical regulation reform would turn to the EU experience in search for lessons. The existence of a similar policy problem, which is a domestic driver of South Korean chemicals policy reform process, explains parts of the receptiveness to drawing lessons from and emulating EU policy.

South Korea has progressed and significantly expanded its environmental policy since the 1990s (OECD 2006). South Korean environmental and health policy has moved towards the incorporation of precautionary elements, for example in its policy regarding the mad cow disease, which also shifted the burden of proof for safe beef imports from the authorities to the producers (Kim 2012: 10-15). The precautionary principle and shifts of parts of the responsibilities to producer are elementary principles of the REACH Regulation. The reform of chemicals policy falls thus into a more general trend of developing South Korean environmental policy, which provides for a relatively receptive environment for the concepts that REACH is based upon.

The capacity of South Korean authorities to implement an ambitious chemicals law is a main factor explaining the smaller scope of the draft proposal in comparison to REACH. For the implementation of REACH, ECHA with about 400 members of staff was created. Additionally, the competent authorities of all 27 Member States are highly involved in the process, in particular, in evaluating the risks of chemicals. South Korea does not possess the same capacity being a single country of about 50 Mio inhabitants in comparison to the EU with its 27 Member States and about 500 Mio inhabitants. Implementation of the South Korean chemicals law is foreseen to be conducted by the MoE, other ministries and existing government agencies. This limited capacity, in relative terms, explains the South Korean approach of first requiring the registration of a subset of all chemicals, which is anticipated to figure around 2,000 substances (Fallström Mujkic 2012: 12).<sup>29</sup> The limited capacity also contributes to South Korea's interest in exploiting synergies and cooperating with the EU.



The structure of the South Korean chemicals industry and its declining exports to the EU are another domestic factor that contributes an explanation for reforming chemicals policy. In addition to the related adjustment effects as outlined above, the industry structure also explains some of the differences between REACH and the South Korean draft proposal. The capacity of South Korean companies, most of which are of medium or small size (Guerin et al. 2007: 100) was taken into account, which led to some different requirements than REACH. 99% of South Korean fine chemicals industry are SMEs of less than 300 employees.<sup>30</sup> The South Korean authorities considered the use of the OECD data format IUCLID 5, which the EU uses for its data submission requirements. This IT tool is complex and requires some expertise to use. Concerns arose that the use of the same IT system and data submission requirements as ECHA uses would exceed the capacity in terms of staff and expertise of smaller South Korean companies. For this reason, the South Korean authorities are considering the development and use of a simpler, own IT tool and data format.<sup>31</sup>

South Korea has a hierarchy of laws that is composed of various levels of regulatory measures with the Act on a second level below the constitution and above the levels of presidential decrees, ministerial ordinances etc., as shown in figure one below Acts generally require a number of lower-level decrees, ordinances and rules to be implemented. Together the Act and the lower-level regulatory measures adopted within its framework make up the regulatory regime addressing chemicals (Chemical Watch 2011: 25).<sup>32</sup> This legislative hierarchy differs from the way legislation is designed in the EU and explains some of the differences in the design of the draft South Korean proposal and REACH. The South Korean draft is shorter and does not go into the level of detail that REACH does. Lower-level measures would implement the draft proposal and more provide details of South Korean chemicals regulation.

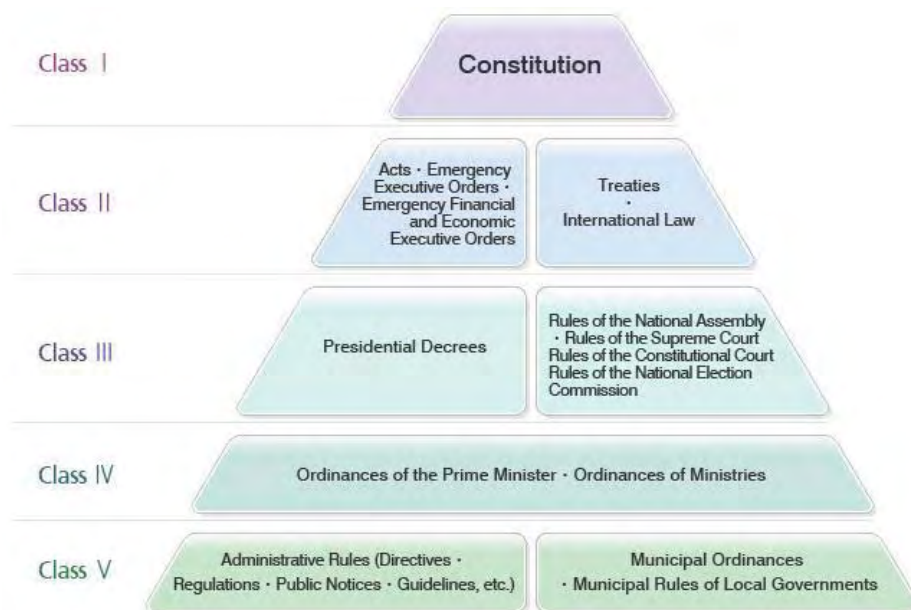


Figure 1: South Korean Legislative Hierarchy (source: Korea Legislation Research Institute, [http://elaw.klri.re.kr/eng\\_service/struct.do](http://elaw.klri.re.kr/eng_service/struct.do))



## 5. POTENTIAL AREAS FOR STRENGTHENING SOUTH KOREA-EU COOPERATION

This section investigates possibilities for enhancing South Korea-EU chemicals regulatory cooperation. On the one hand, growing trade in chemicals and chemicals-related goods calls for regulatory preparedness on both sides for the respectively other regulatory regime and, on the other hand, chemical policy reform efforts in South Korea seem to make the exchange of experiences and lessons between EU and South Korean policy-makers useful. The EU and South Korea could engage in cooperation efforts on two different types of information. The first relates to the regulatory design and the second relates to chemicals data, risk assessment results etc. In the light of the high degree of staff- and expertise-intensity of implementing a comprehensive chemicals management system, observers predict that South Korea is likely to face resource constraints. In this context, the exploitation of synergies and cooperation on the implementation of chemicals regulation appears highly beneficial to both the EU and South Korea. The subsections below outline concrete options for strengthened EU-South Korea cooperation.

### 5.1 EXCHANGING EXPERIENCES AND BEST PRACTICES TO FOSTER LEARNING

While the EU has introduced a fundamental chemical regulatory reform, South Korea is in the process of reforming its chemicals policy. This means that South Korea could learn from EU experiences and build upon them. With the direction in which its reform efforts seem to be moving, South Korea is entering an area that is new for its domestic regulation. Lessons from the EU that went through a similar process could help South Korea avoid some of the flaws and unintended consequences of REACH. While the South Korean capacity and industry structure might require some policy design decisions that differ from REACH, there are a number of elements that the EU adopted and South Korea seems likely to adopt as discussed in great detail in section two above. Once both jurisdictions have adopted their chemicals laws, there seems to be a vast array of issues on which both jurisdictions can cooperate to avoid duplications and benefit from each other's work. EU policy-makers could also benefit from lessons from South Korea since the EU is also in a process of implementing, refining and revising parts of its chemical regulation. There is thus still a lot of work ahead on which the EU and South Korean could cooperate and mutually draw lessons from each other.

### 5.2 EXPLORING OF OPTIONS FOR THE SHARING OF DATA RELATED TO POLICY IMPLEMENTATION

The exchange of chemicals-related data could gain importance once South Korea has adopted its Act on the Registration and Evaluation of Chemicals. When South Korea begins requesting data from producers, the format and type of information requested becomes an important aspect. On the one hand, producers will find compliance with South Korean rules less burdensome if they are in the same format and the same type as they have to submit to the EU, since many companies operate in both markets or are part of a supply chain feeding into both markets. It should be kept in mind, however, that while hazard data remains the same, use data can vary between the EU and South Korea. On the other hand, authorities conducting chemical evaluations could benefit from sharing chemical data and results of risk assessments. Through such cooperation, economies of

scale could be reached. The sharing of data would prevent the duplication of testing, which could help minimise animal tests.<sup>33</sup>

The sharing of data would require a guarantee of the quality and reliability of the results. This could be facilitated if both authorities would work, for example, with laboratories that comply with the OECD Good Laboratory Practices. This would guarantee good quality of the data. However, the sharing of data could encounter a legal obstacle. The data that companies and consortia submit to ECHA are intended for ECHA's use only and not for other purposes. Companies retain ownership of the data. This potentially constrains the possibilities for South Korean authorities to use the data. It seems that the consent of companies prior to the sharing of data could be necessary.<sup>34</sup>

Another concrete way in which cooperation could be facilitated is if South Korea would decide to use the IUCLID 5 data format for its registration processes. In this way the transfer of data between authorities would be facilitated. Chemicals producers invested significant resources in internal IT systems and processes to generate the data that REACH requires. Previous IT systems did not necessarily track the data that is required for REACH registration such as the volume of chemicals.<sup>35</sup> In the light of these investments, aligning the South Korean data requirements, data formats and reporting schedules with what companies have implemented for REACH promises to facilitate the process and to generate efficiency gains for industry and authorities.<sup>36</sup> Yet, as discussed in section 4.3 above, the capacity of South Korean small and medium sized producers to use a complex IT system poses a great challenge and might motivate the MoE to adopt a different, simpler system. In this case, the compatibility of the two IT systems would be an area that EU and South Korean policy-makers could cooperate on in an attempt to avoid unnecessary complications for producers that are active on the EU and South Korean market.

Another aspect of data-related cooperation could be the mutual recognition of registration dossiers at the respectively other authority. This would only work if the data requirements are the same. Data about the toxicity of chemicals is the same in the EU and South Korea and as long as the quality is guaranteed, they are interchangeable. The use of chemicals in manufacturing processes and products can differ between the EU and South Korea. For this reason, use data would still have to be collected separately to cover the respective market.<sup>37</sup> This mutual acceptance is a far-reaching proposal, which would require close cooperation and mutual trust.

### *5.3 STRENGTHENING RESEARCH COLLABORATION*

An additional area of collaboration is between research institutes and testing laboratories. The scientific dialogue and cooperation could be mutually beneficial for the EU and South Korea. Since chemicals management is an extremely complex area, there is a need for scientific research on testing but also on the search for safer alternatives. Joint and mutually complementing research can help use resources more efficiently.

#### **5.4 DEVELOPING OF A STRUCTURE OF FORMAL AND INFORMAL EXCHANGE**

As discussed above, learning from REACH promises great benefit for South Korea and the EU. Chemicals management is a complex and resource-intensive policy area so that the exploitation of synergies and cooperation seems highly beneficial. The interviews conducted for this paper suggest that an effective dialogue is only in its infancy. An institutional framework that could be exploited for the purpose of effective sharing of experiences and best practices that could support the design of South Korean chemicals policy exists in the form of the working group that was established by the FTA. It met once so far. The stated aim of this group is to exchange information and to cooperate in an attempt to avoid regulatory divergences and non-tariff barriers to trade. Since the minutes of the first meeting are not publically available yet, it is difficult to assess what issues in what detail were discussed. It appears that the discussion remained at a general level. The working group comprises government officials from both sides. For the EU, DG Trade is in the lead but brings in representatives from DG Enterprise and other DGs if required.<sup>38</sup> The working group could provide a good forum for the official exchange of information and for finding solutions for the harmonisation of regulatory requirements. The challenge seems to make efficient use of the opportunity provided by the working group.

Given the complexity of REACH and chemicals management, focused and targeted discussions appear crucial. EU-South Korea meetings promise to be most effective if they focus on specific aspects of REACH or related issues.<sup>39</sup> Depending on the issue, different participants might be chosen. The choice of specific topics enables a deeper discussion of the topic rather than addressing everything related to REACH at the same time. Specific topics could be the different stages of REACH, registration, evaluation and authorisation but more effective seem more specific issues such as IT tools, data submission formats, substance information exchange forums, guidance documents, communication in the supply chain, enforcement, the involvement of stakeholders etc.

However, since the working group meetings take place only once a year or every other year, complementing it with less formalised venues of cooperation seems helpful. In times of intense regulatory activity in one of the two jurisdictions, the demand for information- and experience-sharing can be higher than at other times. Collaboration can take place at different levels of hierarchy and detail. While the exchange of information on broad concepts and fundamental ideas of regulatory design could be discussed in a few high-level meetings, technical details are more numerous, occur more frequently and are dealt with by technical level experts. Cooperation on a more frequent and ad hoc basis appears more conducive in these cases.

Especially, the latter kind of cooperation appears not well developed. It seems however an important point for the coming years since in South Korea subordinate rules to the (draft) Act on the Registration and Evaluation of Chemicals are important. These rules would specify many aspects of the law. For this reason, cooperation in this process appears promising to generate mutual benefit in terms of sharing lessons from the EU with South Korea, working on compatibility and minimisation of trade barriers. This seems likely to be situated at the level of experts in the administrations rather than at the higher political level. In addition to the design of regulation, coordination on the implementation and enforcement of regulation could be beneficial.

A concrete step that could help fostering closer and more efficient cooperation between South Korea and the EU on chemical regulation could be the designation of a regulatory cooperation person in ECHA, DG Enterprise, DG Environment, the Korean MoE and other Korean authorities involved. These persons would be tasked to be the contact point for outside requests from their counterparts, they would be in charge of promoting awareness of chemical regulatory developments in other jurisdictions and they would put individual experts in contact with their counterparts in other bodies. So far, it seems that funding for such positions is limited in the EU institutions. ECHA has an international outreach manager but it seems that the resourcing is relatively restricted. ECHA's workload with regard to the implementation of REACH is high. For activities that are not part of ECHA's legal requirements, which would be many of the cooperation activities, there are no resources available.<sup>40</sup>

The EU and Korea could consider signing a Memorandum of Understanding (MoU) on the sharing of knowledge, experience and best practice on matters of mutual interest. Such an agreement would frame the above-described cooperation into a mutually expressed willingness at high political level. Such a MoU could provide the grounds for instruments of enhanced cooperation such as regular meetings at different hierarchical levels. Yet, the establishment of the working group on chemicals by the FTA fulfils this role partially. In the case of efficient implementation of the intention behind the working group and of increased informal contacts at different levels of the hierarchy, a MoU might not be necessary. It could however help setting the process in motion by demonstrating a high-level political commitment.

### **5.5 INCLUDING EU MEMBER STATES**

EU-South Korean cooperation on the evaluation of chemicals would only work if Member States were included. Under REACH, the competent authorities of the Member States conduct the assessment of chemicals in the evaluation stage. ECHA is only involved in the compliance checks of the dossiers, in the testing proposals and in managing the processes. Technical risk assessments are conducted by the Member States. For this reason, their involvement in parts of the EU-South Korea cooperation should not be neglected.

## **6. CONCLUSIONS**

This paper started from the observation that the EU has fundamentally reformed its chemical regulation in 2006 and that South Korea is currently in the process of introducing a significant chemicals regulatory reform. Both (draft) laws expose significant similarities but also some differences. These similarities appear to be a (partial) result of market interconnectedness, mutual awareness and lesson-drawing. Regulatory cooperation between South Korea and the EU, as opposed to a one-sided or non-steered process, was found to be in its infancy. It is relatively ad hoc and patchy. There seems to be scope for enhancing cooperation at all levels of hierarchy. The working group on chemicals that was established through the FTA is a start and demonstrates the recognition that regulatory cooperation is important. It bears the potential to provide a formal framework for strengthened EU-South Korea cooperation.

However, in an attempt to further enhance and foster cooperation, additional structures and personal links are needed. These do not need to be highly formalised but a designated person in the main involved institutions would help setting up and fuelling such dialogue. Such persons could act as link-makers between technical and regulatory experts in South Korea and the EU. Large parts of regulatory cooperation depend on the persons that deal with detailed policy-related questions and their implementation rather than on high-level political appointees. The high-level political commitment seems an important component preparing the grounds for regulatory cooperation but it is equally or even more important that the individuals that work on the policy on a day-to-day basis fill the political commitments with concrete actions. This paper outlined areas in which and options for how this could be done.

The early stage of South Korean chemical policy reform provides a good opportunity for cooperation at an early stage of the policy cycle. This could help avoiding the adoption of barriers to trade and regulatory differences, which would be more difficult to iron out at a later stage of the process.

## Endnotes

<sup>1</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.

<sup>2</sup> The information related to the Act on the Registration and Evaluation of Chemicals presented in this paper is based on an unofficial English translation kindly provided to the author by an industry source and on a personal conversation with an expert involved in the South Korean process.

<sup>3</sup> Author's personal communication with a MoE member of staff, 29 May 2012; with experts involved in the South Korean process, 19 June 2012; presentation by South Korean chemicals regulation expert, 26 June 2012.

<sup>4</sup> Author's personal communication with experts on South Korean chemical regulation, 19 June 2012; presentation by South Korean chemicals regulation expert, 26 June 2012.

<sup>5</sup> Author's personal communication with experts on South Korean chemical regulation, 23 May 2012 and 29 May 2012; with a non-state actor involved in the process, 4 July 2012.

<sup>6</sup> The term producer is used in this paper in the meaning of including both domestic manufacturers and importers of chemicals because in both the EU REACH Regulation and the South Korean legislative proposal manufacturers and importers of chemicals must comply with the same rules when placing chemicals on the respective market.

<sup>7</sup> Author's personal communication with expert involved in the process, 14 June 2012, 19 June 2012; presentation by South Korean chemicals regulation expert, 26 June 2012.

<sup>8</sup> Author's personal communication with experts involved in the South Korean process, 19 June 2012.

<sup>9</sup> 31 December 2004, 21 February 2006, 27 December 2007, 29 February 2008 and 21 March 2008.

<sup>10</sup> The White Paper on Chemicals was published in 2001, the REACH legislative proposal was issued in 2003 and the Regulation was adopted in 2006.

<sup>11</sup> Author's personal communication with a non-state actor involved in the South Korean process, 17 July 2012; with experts involved in the South Korean process, 19 June 2012; presentation by South Korean chemicals regulation expert, 26 June 2012.

<sup>12</sup> See: <http://www.reach.me.go.kr/eng/main/main.asp> (accessed on 23 October 2012).

<sup>13</sup> See: [http://eng.me.go.kr/content.do?method=moveContent&menuCode=pol\\_hnc\\_che\\_man\\_reach](http://eng.me.go.kr/content.do?method=moveContent&menuCode=pol_hnc_che_man_reach) (accessed on 23 October 2012).

<sup>14</sup> See: <http://www.reach.me.go.kr/eng/company/purpose.asp> (accessed on 23 October 2012).

<sup>15</sup> Author's personal conversation with experts involved in the South Korean process, 19 June 2012.

<sup>16</sup> Presentation by the Chemicals Management Division, Environmental Health Policy Office, Ministry of Environment, 23 April 2012. Shared with the author by a representative of the ministry, 25 May 2012.

<sup>17</sup> Presentation by the Chemicals Management Division, Environmental Health Policy Office, Ministry of Environment, 23 April 2012. Shared with the author by a representative of the ministry, 25 May 2012.

<sup>18</sup> Presentation by South Korean chemicals regulation expert, 26 June 2012.

- <sup>19</sup> Author's personal communication with experts involved in the South Korean process, 19 June 2012.
- <sup>20</sup> Author's personal communication with a MoE member of staff, 29 May 2012.
- <sup>21</sup> Presentation by South Korean chemicals regulation expert, 26 June 2012.
- <sup>22</sup> Author's personal communication with European Commission experts, 24 May 2012, 16 May 2012; with expert involved in the process, 14 June 2012, 19 June 2012; with a non-state actor involved in the South Korean process, 17 July 2012.
- <sup>23</sup> Article 15.3, Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part.
- <sup>24</sup> Author's personal communication with an expert involved in the process, 30 May 2012.
- <sup>25</sup> Author's personal communication with a non-state actor involved in the South Korean process, 17 July 2012; with experts involved in the South Korean process, 19 June 2012.
- <sup>26</sup> Author's personal communication with a non-state actor involved in the process, 4 July 2012.
- <sup>27</sup> Author's personal communication with a non-state actor involved in the South Korean process, 17 July 2012.
- <sup>28</sup> Author's personal communication with expert on South Korean chemical regulation, 23 May 2012.
- <sup>29</sup> Author's personal communication with a non-state actor involved in the South Korean process, 17 July 2012; with experts involved in the South Korean process, 19 June 2012, 17 July 2012.
- <sup>30</sup> Presentation by South Korean chemicals regulation expert, 26 June 2012.
- <sup>31</sup> Author's personal communication with experts involved in the South Korean process, 19 June 2012.
- <sup>32</sup> Presentation by South Korean chemicals regulation expert, 26 June 2012.
- <sup>33</sup> Author's personal communication with experts involved in the South Korean process, 19 June 2012.
- <sup>34</sup> Author's personal communication with experts involved in the South Korean process, 19 June 2012; with expert involved in the process, 14 June 2012.
- <sup>35</sup> Author's personal communication with a non-state actor involved in the South Korean process, 17 July 2012.
- <sup>36</sup> Author's personal communication with expert on South Korean chemical regulation, 23 May 2012.
- <sup>37</sup> Author's personal communication with experts involved in the South Korean process, 19 June 2012.
- <sup>38</sup> Author's personal communication with expert involved in the process, 14 June 2012.
- <sup>39</sup> Author's personal communication with expert involved in the process, 14 June 2012.
- <sup>40</sup> Author's personal communication with a non-state actor involved in the South Korean process, 17 July 2012; with expert involved in the process, 14 June 2012.

## References

- Allanou, Remi, Hansen, Bjorn G., and Van Der Bilt, Yvonne (2003a), 'Public Availability of Data on EU High Production Volume Chemicals - Part 1', *Chimica Oggi - Chemistry Today*, 21 (6), 91-95.
- (2003b), 'Public Availability of Data on EU High Production Volume Chemicals - Part 2', *Chimica Oggi - Chemistry Today*, 21 (7), 59-64.
- Biedenkopf, Katja and Park, DaeYoung (2012), 'A Toxic Issue? Leadership in Comprehensive Chemicals Management', in Deborah Rigling Gallagher (ed.),
- Environmental Leadership: A Reference Handbook* (London, Thousand Oaks, CA and New Delhi: SAGE Publications).
- Chemical Watch (2011), 'Asian Economies set Pace on Chemicals Management', *Monthly Briefing July / August 2011*, 25-26.
- Decreux, Yvan, Milner, Chris, and Péridy, Nicholas (2010), *The Economic Impact of the Free Trade Agreement (FTA) between the European Union and Korea. Report for the European Commission, DG Trade*.
- Drezner, Daniel W. (2005), 'Globalization, Harmonization, and Competition: The Different Pathways to Policy Convergence', *Journal of European Public Policy*, 12 (5), 841-59.
- Elkins, Zachary and Simmons, Beth A. (2005), 'On Waves, Clusters, and Diffusion: A Conceptual Framework', *The Annals of the American Academy of Political and Social Science*, 598 (1), 33-51.
- European Commission (2007), *Questions and Answers on REACH. July 2007. Available at: <http://ec.europa.eu/environment/chemicals/pdf/qa.pdf>* (accessed on 6 June 2012).
- Fallström Mujkic, Pia (2012), 'Chemicals Legislation Changing in Asia', *European Chemicals Agency (ECHA) Newsletter* No. 3 June 2012, 12-13.
- Finnemore, Martha and Sikkink, Kathryn (1998), 'International Norm Dynamics and Political Change', *International Organization*, 52 (4), 887-917.
- Gilardi, Fabrizio (2012), 'Transnational Diffusion: Norms, Ideas, and Policies', in Walter Carlsnaes, Thomas Risse, and Beth Simmons (eds.), *Handbook of International Relations* (London, Thousand Oaks, CA and New Delhi: SAGE Publications).
- Guerin, Selen, et al. (2007), *A Qualitative Analysis of a Potential Free Trade Agreement between the European Union and South Korea* (Study submitted to DGTrade).
- Gurowitz, Amy (2006), 'The Diffusion of International Norms: Why Identity Matters', *International Politics*, 43 (3), 305-41.

Hansen, Bjorn G. and Blainey, Mark (2006), 'REACH: A Step Change in the Management of Chemicals', *Review of European Community and International Environmental Law*, 15 (3), 270-80.

Hays, Scott P. (1996), 'Influences on Reinvention During the Diffusion of Innovations', *Political Research Quarterly*, 49 (3), 631-50.

Howlett, Michael and Ramesh, M. (2003), *Studying Public Policy: Policy Cycles and Policy Subsystems* (2nd edn.; Toronto: Oxford University Press).

Kelemen, Daniel R. (2010), 'Globalizing European Union Environmental Policy', *Journal of European Public Policy*, 17 (3), 335-49.

Kelemen, Daniel R. and Vogel, David (2010), 'Trading Places: The Role of the United States and the European Union in International Environmental Politics', *Comparative Political Studies*, 43 (4), 427-56.

Kim, Eun-Sung (2012), 'Technocratic Precautionary Principle: Korean Risk Governance of Mad Cow Disease', *Journal of Risk Research*.

Lavenex, Sandra and Schimmelfennig, Frank (2009), 'EU Rules Beyond EU Borders: Theorizing External Governance in European Politics', *Journal of European Public Policy*, 16 (6), 791-812.

Lazer, David (2001), 'Regulatory Interdependence and International Governance', *Journal of European Public Policy*, 8 (3), 474-92.

Levy, Jack S. (1994), 'Learning and Foreign Policy: Sweeping a Conceptual Minefield', *International Organization*, 48 (2), 279-312.

March, James G. and Olsen, Johan P. (1989), *Rediscovering Institutions. The Organizational Basis of Politics* (New York: The Free Press).

Meyer, John W. and Rowan, Brian (1977), 'Institutionalized Organizations: Formal Structure as Myth and Ceremony', *The American Journal of Sociology*, 83 (2), 340-63.

OECD (2006), *Environmental Performance Review - Korea* (Paris: OECD Publishing).

Princen, Sebastiaan and Rhinard, Mark (2006), 'Crashing and Creeping: Agenda-Setting Dynamics in the European Union', *Journal of European Public Policy*, 13 (7), 1119-32.

Schimmelfennig, Frank and Sedelmeier, Ulrich (2004), 'Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe', *Journal of European Public Policy*, 11 (4), 661-79.

Schwarzman, Megan R. and Wilson, Michael P. (2009), 'Reshaping Chemicals Policy on Two Sides of the Atlantic', in Jo Swinnen, et al. (eds.), *Handling Global Challenges. Managing Biodiversity and Biosafety in a*



*Global World. EU, US, California and Comparative Perspectives* (Leuven: Leuven Centre for Global Governance Studies), 306-26.

Scott, Joanne (2009), 'REACH: Combining Harmonization and Dynamism in the Regulation of Chemicals', in Joanne Scott (ed.), *Environmental Protection* (Oxford, UK: Oxford University Press), 56-.

Shipan, Charles R. and Volden, Craig (2008), 'The Mechanisms of Policy Diffusion', *American Journal of Political Science*, 52 (4), 840-57.

Simmons, Beth A. and Elkins, Zachary (2004), 'The Globalization of Liberalization: Policy Diffusion in the International Political Economy', *American Political Science Review*, 98 (1), 171-89.

Simmons, Beth A., Dobbin, Frank, and Garrett, Geoffrey (2006), 'Introduction: The International Diffusion of Liberalism', *International Organization*, 60 (4), 781-810.

Vogel, David (1997), 'Trading Up and Governing Across: Transnational Governance and Environmental Protection', *Journal of European Public Policy*, 4 (4), 556-71.

Weyland, Kurt (2009), 'The Diffusion of Revolution: '1848' in Europe and Latin America', *International Organization*, 63 (3), 391-423.

Williams, E. Spencer, Panko, Julie, and Paustenbach, Dennis J. (2009), 'The European Union's REACH Regulation: A Review of its History and Requirements', *Critical Reviews in Toxicology*, 39 (7), 53-75.



**DIFFERENT PATHS TOWARDS THE SAME GOAL?  
COMPARING THE IMPLEMENTATION AND PERFORMANCE OF CO<sub>2</sub> EMISSIONS REDUCTION REGULATIONS IN THE EU AND  
SOUTH KOREA**

STEFAN NIEDERHAFNER

CHAN SONG LEE

**1. INTRODUCTION<sup>1</sup>**

On the following pages we comparatively analyse the European Union's (EU) and the Republic of Korea's (hereafter referred to as Korea) greenhouse gas emissions reduction systems. Both the EU and Korea implemented regulatory frameworks to reduce greenhouse gas (GHG) emissions within their territories to support the shift towards a low-carbon, green economy. Two of the most important policy instruments towards these ends are the Emission Trading System (ETS) set up by the EU and the Target Management System (TMS) implemented by Korea. The two systems show several similarities beyond their common goal to reduce carbon dioxide (CO<sub>2</sub>) emissions. Both systems focus specifically on big emitters – around 11,000 installations in the EU, equalling approximately 50% of the total EU CO<sub>2</sub> emissions, and around 480 installations in Korea, responsible for 60% of the total Korean CO<sub>2</sub> emissions. Likewise, both aim for specific CO<sub>2</sub> reduction goals by the year 2020 – a 21% reduction against the 2005 emissions in the EU and a reduction by 30% compared to the business as usual scenario in the Korean case<sup>2</sup>.

How they intend to change the behaviour of the big emitters is, however, addressed in quite different ways. The EU, belonging to the Annex I group of the Kyoto Protocol, had to quickly initiate a binding programme to reach her mitigation goals. An ETS, relying primarily on a market mechanism to achieve GHG reduction, was seen as the best alternative considering the previous failure introducing a common EU carbon tax in 1992 (more in section 2).

Korea is a non-Annex I country, but the world's 7<sup>th</sup> largest GHG emitter in 2010<sup>3</sup>. The country took a different approach to the mitigation issue. Building on a regulatory framework introduced in 1998 to steer Korean companies towards a reduction in their energy consumption, Korea initiated the government-led GHG TMS. The centralized TMS relies on reductions made against a business as usual (BAU) baseline, with the amount of reduction subject to negotiations between the government and the operators (more in section 3).

The main purpose of this paper is twofold. This paper compares the EU Emission Trading System (ETS) and South Korea's Target Management System (TMS), with two goals: evaluate the potential for successful CO<sub>2</sub> mitigation in each system and investigate the compatibility of the EU ETS and the Korean TMS to assess possibilities for regulation transfer and co-operation.

The Korean National Assembly, however, decided recently to transform Korea's GHG mitigation regulations into an ETS in 2015. That means the question of how the Korean TMS could be connected with the EU ETS, e.g. how to create trade of emission allowances between the two systems is hardly of practical interest

anymore. But the Korean TMS can now with good reason be seen as a predecessor to an ETS or, in other words, as the first stage on the way to an ETS. Therefore, a comparison of the early stages of both systems allows us to draw generalizations and conclusions on the feasibility and potentials of each to inform other actors in elaborating their own CO<sub>2</sub> reduction regulations.

The paper is structured as follows: section 2 outlines the theoretical concepts and the analytical framework we apply to make the comparison operable. Section 3 discusses the EU ETS and section 4 the South Korean TMS. Section 5 presents a comparative analysis, while section 6 provides conclusions.

## **2. THEORETICAL CONCEPT AND ANALYTICAL FRAMEWORK**

To facilitate the comparison and provide a framework that allows a description of similarities and differences between the two systems with the aim of identifying areas of co-operation and potential for regulatory transfer, we introduce the following theoretical concept.

### **2.1 THEORETICAL CONCEPT**

The analysis of the regulatory settings subject in this study is based on a neo-institutional concept in the sense that we concentrate on the regulatory, institutional settings of each system while also taking the behaviour of the actors into account (Scharpf 1999), both those responsible for and those targeted by these institutional settings. While the focus on the institutional frame is predominant in the sections that deal with the design and implementation of the systems, the role of the actors becomes important in the sections on the bargaining and decision-making phases preceding the systems. Furthermore, we introduce three general regulatory modes to analyze the institutional settings: the market, the governance, and the developmental state modes.

The market mode refers to a system in which the role of the state is rather limited; market dynamics, created by the relation between supply and demand and informed by price signals, are at the heart of this regulatory mode. Private actors are at the centre. Besides guaranteeing the functioning of the market principle, regulatory activity is unnecessary. However, with this mode it is quite difficult to aim for specific political goals if they are not directly related to a profit, for example goals related to common goods.

The governance mode refers to systems in which both government and private actors cooperate in an interdependent relationship with each other, because neither the governmental nor the private actors can realize their goals without the other. Even the goals are subject to negotiation and bargaining processes between the various actors. It is also possible to integrate not only private and governmental actors within this mode, but governmental actors from various levels of public administration, in particular those situated in the supra- or sub-national levels. Especially within the context of EU Integration, governance approaches were often and productively applied, since the complexity of EU processes is not understandable when focussing on national-level actors alone (Marks, Hooghe, and Blank 1996; Peters and Pierre 2001; Hooghe and Marks 2003; Bache 2008; Benz 2008; Heinelt and Niederhafner 2008).

Finally, the developmental state mode was basically expounded to explain the pattern of Japan, South Korea, and other Asian states' economic development. This concept sees the nation state as the central actor which dictates the regulatory framework in a top-down, sometimes rather authoritarian fashion, with which the social actors, including corporations, have to comply. Market mechanisms are implemented, but in a state-controlled fashion, often to boost exports. Non-compliance leads to significant penalties, which secures the implementation of the rules (Johnson 1995; Woo-Cummings 1999).

Given that the EU's regulatory approach implies the establishment of a carbon market, it is expected that this would be the guiding principle of the EU case. However, given that the EU bodies have to rely on the national administrations to implement EU policies, strong elements of multi-level governance are expected as well. Given that Korea has frequently been cited as one of the main cases in support of the developmental state model (Kalinowski 2008), the TMS is expected to primarily be a top-down and state-centred policy. The more differences the two systems show, the less likely will co-operation or regulation transfer be.

## **2.2 ANALYTICAL FRAMEWORK**

To facilitate a better understanding of the systems' development over time and the role of the specific actors at specific times, we break both cases down into several policy phases.

### **1. THE BARGAINING PHASE**

The first step is to focus on the political debate that led to the decision for a specific GHG mitigation regime. In particular, this process highlights how the different actors (especially government and business actors) influenced the policy decisions that were eventually taken.

### **2. PHASE 0: PLANNING AND PREPARATION PHASE**

The second step is to focus on planning and design before the system is actually implemented, phase 0, so to say. In the Korean case, however, this step is rather incremental, since the GHG mitigation system is built into a pre-existing regulatory setting. And since this previous system should be seen as the first phase in implementing the system, we fused phase 0 with phase 1 in the Korean case (indicated by 0/1 in the heading).

### **3. PHASE 1: THE IMPLEMENTATION PHASE**

In this step, we describe the implementation and in both cases the rather experimental first years. The focus is on the initial struggles, shortcomings and successes of each system.

### **4. PHASE 2 AND CONSECUTIVE PHASES**

Depending on the case, the implementation phase is followed by two or more consecutive phases, in which the system is enhanced, adjusted, or even completely transformed. Both systems did already announce changes until 2020. We provide a brief outlook on the future plans of both systems and integrate the directions of planned future developments into our conclusions.

The next two chapters present the case studies.

### **3. THE EU ETS**

The EU and her then 15 member states (MS) supported the Kyoto Protocol from a very early stage and ratified it in 2002, committing themselves to an 8% CO<sub>2</sub>e<sup>4</sup> emission reduction target by 2012, with 1990 as the base year. With the European Burden Sharing Agreement of 1998, this total of 8% was broken down in specific national targets (EU Com 1999, 3). Germany, for example, agreed to a 21 % reduction, while Portugal agreed to limit its CO<sub>2</sub>e emission growth to a plus 28% (EU Com 2009, 14) until 2012, with 1990 as the base year. How the MS actually achieve their targets was their responsibility, but they agreed to coordinate national activities with and through the institutions at the EU level, namely the European Commission. Furthermore, the MS agreed to implement an EU-wide ETS as one of the cornerstones of the EU level activities.

The EU, supported by many developing countries and environmental NGOs, was primarily opposed to the idea of making market mechanisms the main strategy of a global CO<sub>2</sub> mitigation regime, which had been pushed by the USA in the UNFCCC negotiations 1997 (Convery 2008, 7–9; Ellerman and Buchner 2007, 67). However, the EU and her MS began to accept the concept over a several-year discussion process. In what is often seen as an ironic development, the EU rather suddenly became the global champion of emissions trading after the USA under the lead of G.W. Bush withdrew from the Kyoto Protocol in March 2001. At this critical juncture, the EU accepted its leading role and moved ahead of the other Kyoto Protocol parties by implementing the EU ETS in 2005, which is now by far the largest and most international ETS, setting standards for all other future ETS efforts worldwide.

#### **3.1 THE BARGAINING PHASE DURING THE 1990s - FROM TAXES TO MARKETS**

One of the primary reasons<sup>5</sup> given for the turn towards a market-based concept was the several successful national ETS experiences achieved at the time, such as the US Sulphur Dioxide cap and trade system and the ETS in Denmark, the Netherlands, and the United Kingdom (UK) (Ellerman and Buchner 2007, 68).

Another reason that should be considered was the general zeitgeist at the time, after the breakdown of the communist Soviet empire, at the turn of the millennia, and before 9/11, when capitalism in general and market mechanisms in particular were seen by many as the prevailing and now unchallenged modes of social organization. In Europe, namely Germany and the UK, many so-called 'new labour' and 'Neue Mitte' (German: new centre) governments were in power, attempting to modernize their traditional socialist-leftist parties by introducing more 'capitalism-friendly' policy concepts. The integration of market concepts into the domain of environmental politics, traditionally a stronghold of market-critical or even anti-capitalist perspectives, can be interpreted as a sign of the success of these endeavours.

Last but not least, various attempts to implement a CO<sub>2</sub> mitigation regime that followed a classical regulatory command and control pattern or to introduce an EU-wide CO<sub>2</sub>/energy tax, such as proposed by the EU Commission in June 1992, failed to gain acceptance during the 1990s. European and national business groups in

particular displayed fierce resistance against an EU-wide CO<sub>2</sub>/energy tax. A carbon market, including the possibility of potential profits, had a far greater appeal to these actors. That the political leaders maintained their commitment towards the Kyoto targets and made clear that not adopting a GHG reduction policy was not an option facilitated the acceptance of the ETS as the lesser of two evils.

By 2000, market-based concepts were seen by the most important actors, including the EU Commission, the MS governments, the European and the national business groups, and to some extent even environmental groups, as the best option for moving forward and actually implementing measures that would decrease the EU's GHG output.

### **3.2 PHASE 0: THE DESIGN AND PREPARATION PHASE 2000-2004**

The preparation phase starts around 2000 with the EU Commission's Green Paper on GHG Emission Trading (EU Com 2000), and includes the 2001 EU Commission's proposal for an ETS directive, the various amendments to the proposal by EU Council and European Parliament, the early allocation plans, and the so-called linking directive 2004/101/EC. Instead of analysing each decision in detail<sup>6</sup>, we will focus on the main developments of this period.

One of the most remarkable observations is the speed with which the EU proceeded towards ETS implementation. The EU Commission published its Green Paper on Emissions Trading in March 2000. Usually, the EU community method requests a white paper that reflects the reactions on the green paper, then another reflection round on the white paper, before a first draft is submitted to the EU Council and the European Parliament. In this case, however, the EU Commission quickly provided its draft in October 2001, and already by October 2003, the directive 2003/87/EC establishing the EU ETS was adopted. Directive 2004/101/EC that linked the EU ETS with the Kyoto flexible mechanisms followed soon. On 1 January 2005, the EU ETS began operating, six weeks before the Kyoto Protocol itself went into force. This demonstrates that the EU ETS, though closely linked to and embedded in the Kyoto Protocol regime, is a stand-alone system.

Furthermore, it is worth noticing that this planning phase actually included the first two phases of the EU ETS right from the start; all concepts were developed with a view to 2012, the year that the Kyoto Protocol expires – and actually beyond. The adjustments made between the specific phases were, as will be explained below, rather small and incremental, and did not change the overall principles of the system.

Basically, the EU ETS was of a cap and trade design. The objects traded were not the emissions themselves, but permissions to emit one tonne of CO<sub>2</sub> gas – the so called EU allowance (EUA). These allowances, as well as those generated by the Kyoto's Joint Implementation (JI) and Clean Development Mechanism (CDM) mechanisms, are basically an accounting currency; each allowance has a specific numbering which makes it identifiable.

In contrast to the Kyoto Protocol, the actual subjects of the EU ETS were not the nation states. Instead, the system targeted the specific GHG emitting companies directly, and in the first two phases exclusively in terms of CO<sub>2</sub>. It was estimated that such a system would cover around 12,000 installations, responsible for more than 2 billion tonnes of CO<sub>2</sub> emissions what would equal approximately 46% of total EU CO<sub>2</sub> emissions (Kruger, Oates,

and Pizer 2007, 115). Sectors included were coke, iron, and steel production, oil refineries, certain metal, mineral and cement industries, electricity generation as well as pulp and paper production (Domau 2005: 420). Other sectors, like private households, transportation and aviation, or combustion facilities with less than 20 MW thermal power were not included. CO<sub>2</sub> mitigation policies addressing these sectors needed to be implemented in parallel with the EU ETS. This meant that the EU ETS was not the only, but nevertheless one of the most important, EU instruments for CO<sub>2</sub> mitigation<sup>7</sup>.

Since the EU ETS design is closely related, though not dependent on the UNFCCC and the Kyoto Protocol, it makes sense to start a multi-level analysis on the global level.

#### **THE GLOBAL LEVEL**

The total number of EUAs available within the EU – the so-called cap – was defined by the EU's global commitment within the UNFCCC: the total CO<sub>2</sub>e emissions in tonnes that the EU reported to the UNFCCC and as of the Kyoto Protocol base year 1990, minus the amount necessary to realize the overall reduction of 8% EU CO<sub>2</sub>e emissions by 2012. It is worth keeping in mind that the Kyoto Protocol allows the EU and her MS to buy allowances stemming from CDM or JI activities, in case they fail to achieve adequate CO<sub>2</sub> emission reductions within their territories.

#### **THE EU LEVEL**

To break the EU-wide amount of EUAs down in the shares each MS was allowed to issue, the following procedure was invented:

Each MS agreed to submit a National Allocation Plan (NAP) to the EU Commission, reflecting its specific Kyoto Protocol target within the EU bubble as well as the strategies to realize it by 2012 (Kruger, Oates, and Pizer 2007, 115). The NAPs, operating with a timeline until 2012 as well, outlined the total amount of EUAs a MS planned to distribute annually and how these allowances were allocated to the specific single installations.

The matter was further complicated by the EU enlargement in 2004. In 1997, when the EU MS agreed to share the burden within the EU bubble and the Kyoto Protocol was signed, the EU had 15 MS, all Annex I countries. They were the only members of the 8% EU-bubble agreement. As the EU ETS was being designed and implemented, the EU enlarged to 25 MS. Two of the new members, Malta and Cyprus, had no Kyoto Protocol reduction targets at all, while the eight other new MS, all former communist countries, as Economies in Transition (EIT), had specific reduction targets outside the EU bubble (EEA 2011, 18; UNFCCC 2008,13,117). They were all, however, included in the EU ETS and had to deliver NAPs in 2004<sup>8</sup>.

The EU Commission had the supervising role, ensuring an actual cap against the BAU projections of a given state. The Commission controlled whether the MS had planned a realistic strategy to meet its Kyoto Protocol targets and was supposed to ensure scarcity among the EUA supply, so that market dynamics could be initiated in first place. According to Convery et. al, "the Commission reduced 15 NAPs in the first allocation phase by 290 million ton(nes) annually and 23 NAPs in the second allocation phase by 242 million ton(nes) annually" (Convery et al. 2008, 10).



Furthermore, the EU Commission eliminated clauses from the NAPs that enabled the MS to increase the number of allowances, the so-called “ex-post adjustment”, in case of unpredicted increases in the total CO<sub>2</sub> emissions (Ellerman and Buchner 2007, 71) caused for example by economic growth or extreme weather, thereby ensuring an actual EU-wide reduction as well. A MS not able to stay within its total EUA budget could buy EUA from other MS or allowances stemming from CDM or JI activities to balance its account. Last but not least, the EU Commission set the standards for monitoring and reporting the GHG emissions within the EU and supervised the national EUA registries (see below) as well as the transactions within each and between the national registries.

#### **THE NATIONAL LEVEL**

The EUAs are actually created and issued by the MS. After the EU Commission approved their NAPs, they apply a two-step system to distribute their national EUA budgets. In the first step, the “macro plan,” the MS decided what EUA amount of the national total was distributed to the sectors included in the EU ETS, and therefore were actually tradeable within the EU ETS, and which share went to the excluded sectors excluded (German Federal Ministry for the Environment and Safety 2004, 12).

The second step – the “micro plan” – within a NAP outlined how the EUA of the tradeable sectors were distributed to the actual actors in the ETS – the specific companies. The NAPs outlined the basic ways how the individual EUA amounts were fixed (e.g. according to “historical emission data”), how they were distributed (e.g. per auction or free of charge) and how new market entrants or closures were dealt with (for an example see: (German Federal Ministry for the Environment and Safety 2004, 21–46)).

To provide the infrastructure for the actual trading, the MS had to establish competent authorities to administer and verify the CO<sub>2</sub> emitters’ reports (see below), to operate the national EUA registry and report to the supervising EU Commission (Dornau 2005: 421). The MS could utilize the experiences gained and institutions established in the course of their CO<sub>2</sub> emission reporting duties first within the UNFCCC and later under the Kyoto Protocol<sup>9</sup>. The challenge, however, was that the systems developed within the UN framework were basically reporting from a national perspective using aggregated numbers, while the EU ETS addressed thousands of individual CO<sub>2</sub> emitting installations. That meant that much more and more precise data had to be collected and processed.

Another part of the infrastructure was the establishment of trading places and spot markets where the companies involved could trade EUAs.

#### **THE COMPANY LEVEL**

Each installation that was subject to the EU ETS and thus allocated with a specific amount of EUAs, had an account with the competent authority, which, similar to a bank account, registered holdings and movement of the allowances. Each installation received a specific total amount for each phase, meaning that the overall amount of allowances was fixed for three and then five years, respectively. The operators of the EU ETS installations actually received their EUAs in so-called annual compliance cycles.

On February 28 each year, EU operators got their annual share of allowances transferred to their accounts. In terms of trading, this is important since EUA trading contracts, including many derivatives like futures or options, are bound to EUAs from a specific year (see figure 1 below). Each operator had until March 1 to deliver a report on his annual emissions. The reports were verified by the competent authority, and by April 30 the operator had to surrender allowances equalling the exact amount of his verified CO<sub>2</sub> emissions.

If the operator emitted more CO<sub>2</sub> than allowances were credited to him in first place, he had to borrow or buy additional ones. Borrowing meant that a surplus of CO<sub>2</sub> emissions in one cycle could be balanced by borrowing against next cycle's allocation of EUAs. At the end of a phase, however, the operator's account had to be balanced and adequate numbers of EUAs had to be surrendered. Instead of borrowing against their own futures, operators could buy missing allowances from other EU ETS actors, or, after directive 2004/101/EC, purchase allowances that were created outside the EU via the Kyoto Protocol's JI or CDM programmes. An operator who failed to deliver enough allowances at the end of a cycle or phase was subject to substantial penalties: a fine of 40 Euros per missing allowance until 2007 and 100 Euros for phase 2 (Dornau 2005: 423). The missing allowances, however, had to be surrendered in the next compliance cycle; therefore, the penalties imposed no price maximum on the allowances.

If less CO<sub>2</sub> had been emitted than allowances granted, the surplus EUAs could be sold or banked. Thus, if a company produced less CO<sub>2</sub> in the first cycle, they could sell the extra credits or keep the overflow in their account to use in the next compliance cycle. EUA transfer from one phase to next, however, was not possible. On June 30, the surrendered allowances were deleted<sup>10</sup> and the compliance cycle was completed.

In the following sections, we explore the actual implementation of the EU ETS.

### **3.3 PHASE 1: 2005-2007**

As mentioned, one of the biggest challenges was in the distribution of allowances, since company-based GHG emission data was not available<sup>11</sup>. That the 20 MW-threshold is relatively low; meaning thousands of rather small installations had to be included, contributed to the problem (Ellerman and Buchner 2007, 69). Therefore, in the first phase the competent authorities did not yet have the means to actually control and verify most of the data or follow up with operators that did not report (correctly). Overall, however, companies were "cooperative" and only a few cases of incorrect information were reported (Ellerman and Buchner 2007, 70). In any event, most MS governments did not really try to implement a significant cap on their industries and were rather generous with their estimations of their national quota of EUAs (see below).

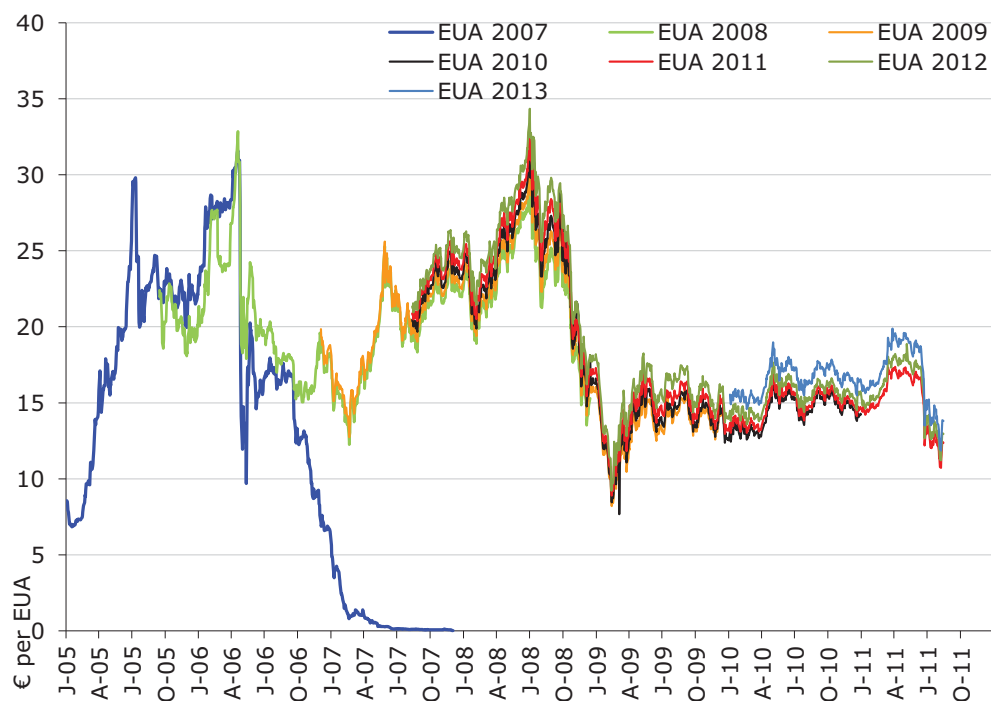
Once the system started on 1 January 2005, market dynamics did indeed develop, with the future<sup>12</sup> price for 1 EUA rising to over 30 Euros in May 2006 (see the dark blue line called 'EUA 2007' in figure 1 below). However, in the middle of the first phase rumours spread about an EUA over-allocation and companies stopped hedging their EUAs, since they were not transferable to the next phase anyway (World Bank 2007, 12).

During the first half of 2006 it became clear that there was a serious oversupply in the market. The spot price of EUA 2007 lost around 2/3 of its value in May 2006, eventually crashing to below 1 Euro in mid-2007 and never recovering. According to Carbon Trade Watch, there was "an overall surplus of 267 MtCO<sub>2</sub>e (Megatonnes

Carbon Dioxide Equivalent, the internationally recognised measure of greenhouse gas emissions), or about 4 per cent of the total emissions covered by the scheme. In other words, the 'cap' did not cap anything" (Carbon Trade Watch 2011, 2). The oversupply of EUAs had another implication: the amount of CDM or JI projects generated by EU demand was much lower than estimated, and therefore the EU ETS did not deliver the expected positive impact in the area of global development cooperation (World Bank 2007, 12).

Even though the EUA 2007 price did not at all develop as intended, the futures based on phase 2 EUAs fared better, as the light green line (EUA 2008) and the orange line (EUA 2009) in Figure 1 indicate. The value of the EUA 2008 futures, being based on a phase 2 EUAs, even increased in value at the end of phase 1 (see figure 1). That means that even though the market partially broke down, trading based on other EUAs continued and maintained a certain value. At the end of the phase, the EU ETS was globally by far the biggest ETS, especially in terms of volume, value, and transactions. According to the World Bank, in 2007, the EU ETS represented a market volume of 2,060 Mt CO<sub>2</sub>e of a global carbon trading system total of 2,108 Mt CO<sub>2</sub>e, and its value was 49,065 million US-\$ out of a global total of 49,361 million US-\$ (World Bank 2007, 5), with strong expectations of further growth.

Figure 1: Development of EUA future prices 2005-2011



Source: own graph based on data from <http://www.eea.europa.eu/data-and-maps/figures/eua-future-prices-200520132011>, 30 August 2012.

### **3.4 PHASE 2: 2008-2012**

Even though the EU ETS failed to create any market dynamics that led to actual emissions reductions in the phase 1, the programme was extended. Bulgaria and Romania joined the EU in 2007 and were integrated into the EU ETS as well, bringing the total number of MS to 27. Additionally, the three countries of the European Economic Area, Iceland, Liechtenstein and Norway, also UNFCCC Annex I countries, decided to join the EU's ETS, bringing the number of participating states up to 30. Furthermore, from 1, January 2012 on, aviation was integrated.

Due to the failure to create a functional market in phase 1, the EU, mainly driven by the EU Commission, implemented several changes. First of all, the total amount of EUAs was reduced beyond the 2005 NAP's plans. As was stated in the NAP II published in November 2006, the amount of EUAs in phase 2 allocated in the EU 15 was reduced by 13.6% compared to the number allocated in phase 1. The decrease of phase 2 EUAs compared to the actual CO<sub>2</sub> emissions of phase 1, by way the more important number, was -8.7% for the EU 15 (Ellerman and Joskow 2008, 33); the system was now actually set to decrease EU CO<sub>2</sub> emissions. Additionally, the number of EUAs allocated for free decreased, even if only by a small amount. While in phase 1 almost all of the EUAs had been allocated for free, in 2010, 1,988 million were freely allocated and 92 million were auctioned or sold (EEA 2011, 45). These measures were supposed to ensure the functioning of the carbon market, which nevertheless remained highly volatile, as can be seen in Figure1.

In contrast to phase 1, trade in CDM and JI allowances took off. In particular, the amount of CDM allowances grew continuously from 2008 to 2011, by which time the Kyoto allowances represented 19% of all EU ETS transactions (World Bank 2012, 18). However, even though the total number of EUAs was reduced in phase 2, the EU ETS has again had to struggle with an oversupply problem. Many reports indicate that the impact of the 2008 global financial crisis and its offshoot, the so called Eurocrisis since 2010, have destabilized the price mechanism once again. Decreasing EUA prices in late 2008 and early 2009 have been explained due to liquidity problems of companies who wanted to cash in their EUAs (World Bank 2009, 6). Moreover, the economic downturn and mild winters lead to a decrease in energy production and consumption, and therefore to a 'natural' decrease in CO<sub>2</sub> emissions that might render the cap dysfunctional once more. As of August 2012, the EU ETS is not in safe water yet.

### **3.5 PHASE 3: 2013-2020**

Even though phase 3 has not yet begun when this paper was written, some interesting facts are already discernible. First of all, this phase will be longer, lasting until 2020. Gases other than CO<sub>2</sub> that contribute to the greenhouse effect will also be included (EEA 2011, 19), making the EU ETS more compatible with the Kyoto Protocol regime. And more sectors will be integrated, as was the case with the addition of aviation in 2012. The NAP arrangement will be replaced by a system in which the allocation of EUAs is centrally determined and organized by the EU, the MS will not be able to independently decide their EUA quotas. In other words, the 30 national caps within the EU ETS will be replaced by one EU-wide cap (EU Com 2009, 17). In connection with that is a fixed reduction rate introduced, that will linearly decrease the number of available allowances by 1.74%

annually (actually applied since 2011) until at least 2020, therefore leading to a total emission reduction of 21% compared to 2005 (EU Com 2009, 17). Furthermore, the free allocation of EUAs will be reduced continuously in favour of auctioning.

Another change is that the EU Commission introduced a registry at the EU level, which has been used since January 2012 to manage aviation-related affairs. The EUAs in that system were issued by the EU and therefore named differently – EUAA, with the additional ‘A’ standing for aviation. In June 2012, all national registries were directly connected to the EU system, and all account details were fed in, creating a “unified and centralised Union registry” (UBA 2012, 5). Whether these changes achieve their intended aims and better prepare the EU ETS against external shock will be the subject of future studies. We now turn to the Korean TMS.

#### **4. SOUTH KOREA’S TARGET MANAGEMENT SYSTEM**

Korea ratified the Kyoto Protocol but, as a non-Annex I country, does not have any specific GHG reduction obligations. However, it was one of the first non-Annex I countries to announce a quantitative GHG reduction goal and decided in November 2009 to reduce national GHG emissions by 30% by 2020, compared to a BAU scenario trajectory. That would correspond to a 4% reduction from 2005 (UNEP 2010, 20). One of the main instruments the Korean government created to this end is a specific regulatory setting to reduce GHG emissions as well as control and manage energy consumption, called the Greenhouse Gas and Energy Target Management System (TMS). Although an ETS was discussed to be a superior policy tool to achieve GHG mitigation, until recently it found no majority in Korea. One reason was that a TMS had already been established, as will be explained below.

##### **4.1 THE BARGAINING PHASE – TMS vs. ETS**

When the Korean TMS was initiated in 1998, its target was to reduce energy consumption within Korean industries. The Korean economy is heavily dependent on foreign fossil and nuclear fuel imports, comprising more than 97% of the total primary energy use. During the Asian financial crisis from 1997 to 1998, reducing the trade deficit and enhancing energy security ranked high on the agenda for policymakers. The Korean government introduced the TMS as a voluntary scheme, providing financial and technological support to those firms that pledged themselves to energy reduction goals. The system was maintained until 2008, at which time it was transformed to integrate GHG emissions reductions as well.

One major reason to include GHGs in the system was a decision made by President Lee Myung-bak to set a specific GHG reduction goal for Korea, which should be seen in the context of his “National Green Growth Strategy”. The President wanted to establish Korea as a global leader in climate protection policy; as such, government and administration policymakers had to reflect the President’s commitment to green growth.<sup>13</sup> The TMS appeared to be an effective and efficient policy tool to integrate the government’s new drive for emission reductions with the previous energy saving goal<sup>14</sup>.

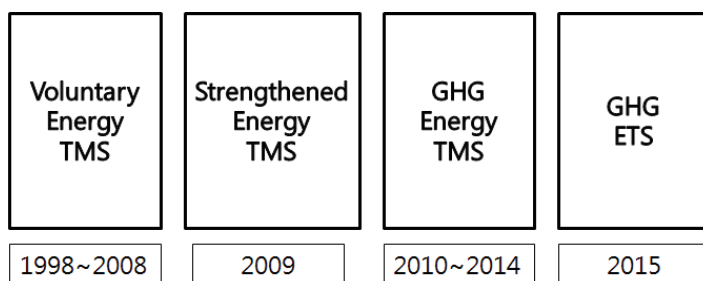
Furthermore, Korea's energy policy needed to be better integrated into a global system, particularly into a global ETS as implied in the Kyoto Protocol. Korea had already recognized the financial benefits of the Protocol's flexible mechanisms and emerging renewable energy markets, and had actively taken part in CDM projects. With the prospect of a global ETS as an important market regime, the Lee Myung-bak administration wanted to prepare for future participation not just as a target country for CDM projects, but as a fully integrated ETS member. The previous energy-focused TMS could not reflect such intentions without major modifications. Accordingly, the "Basic Law on Low Carbon, Green Growth" was passed by the National Assembly in December 2009 and the enforcement ordinance of the law, set forth in April 2010, integrated a GHG reduction target into the pre-existing TMS<sup>15</sup>.

The Korean government discussed introducing an ETS to regulate GHG emissions, entirely replacing the TMS. However, strong resistance from Korean business groups resulted in the policy of tightening the TMS and including a GHG target.<sup>16</sup> Many CEOs expressed their concerns that the Korean economy was yet not prepared for the full operation of an ETS and that premature implementation of the system would negatively affect economic growth nationwide. The Ministry for Knowledge and Economy (MKE) also objected to an early adoption of the ETS in Korea, for the same reasons. Furthermore, the Energy TMS was already more than a decade old, and business groups felt more comfortable with modifications to the existing programme than introducing an ETS. Under the TMS, they could negotiate directly with government officials to determine their reduction targets, which would be based on the BAU scenario in the first phase. It also became clear that, besides publicizing the company name in the event of failure to achieve a target commitment, the new GHG TMS would set very low penalties: upon the first failure, the government would only give a warning. If a specific installation failed to follow the government's commands, the latter would impose a three million won (approximately 2200 Euros) penalty. Further non-compliance would result in a penalty of six million won. From the third failure on, installations would pay ten million won. Overall, these were rather undemanding financial burdens for companies of the size the TMS addressed.

Another point in favour of retaining the TMS was that the Korean government had not secured appropriate GHG inventories for companies and installations in the past, and consequently did not know to what extent the companies could reduce emissions. A modified TMS frame could serve as an instrument to gather such information, while also sending a clear signal to business groups about the government's long-term commitment to reducing GHG emissions.

Last but not least, Korea had to keep in mind its negotiating position in the global climate change regime. In that context, although Korea continued to present itself as a developing country, it was nevertheless pressured into substantive mitigation action by other major economies. The TMS was supposed to ease international pressure by displaying that 'Korea is doing its best as a developing country'. To rapidly install an ETS, however, might have sent a signal that Korea, actually, was better placed among the Annex I than the non-Annex I countries, and the Lee Myung-bak administration wanted to avoid that. But at the same time, it wanted to gain benefits by participating in the global movement towards renewable and sustainable energy markets and green growth.

Figure 2: Phases of the Korean GHG mitigation regulation



Source: own graph

For these reasons, the Korean Government decided against the direct introduction of an ETS and to decided to first reform the established Energy TMS in 2009 (see figure 2 below), followed by the inclusion of GHG management from 2010. However in 2012, two years after the initiation of the GHG and Energy TMS phase, the Korean Parliament decided that the TMS would be replaced by an ETS by 2015<sup>17</sup>. The following sections describe these developments in detail.

#### **4.2 PHASE 0/1: THE ENERGY TMS 1998–2008**

The TMS is a managerial approach following a clear top-down strategy in which the government is at once initiator, planner, manager, and supervisor. As mentioned , the Korean government first introduced the system in 1998 in the middle of the Asian financial and economic crisis. The government decided to accept the assistance of the International Monetary Fund (IMF) by acquiescing to harsh structural economic reform conditions, which in turn caused significant job loss and social turmoil. Therefore, the initial TMS was not to pressure and enforce companies to follow the government's energy guideline, but more to encourage voluntary participation and compliance for mutual benefit.

As of 2008, 1,355 installations had participated in the voluntary scheme, and about 0.7 trillion won had been invested in saving energy and improving energy efficiency. However, Korean companies had not shown much interest in this voluntary programme to initiate energy consumption reductions; the overall result was rather unimpressive. Most companies did not even have a special division to take charge of energy issues, which reflects the low priority given to the matter. Furthermore, there were significant institutional weaknesses: there was no governmental mechanism to evaluate and verify whether the companies had achieved the agreed-upon targets, and consequentially no penalty system. Therefore, by April 2009, the Korean government had decided to strengthen and advance the Energy TMS (Im et al. 2010, 161).

#### **4.3 PHASE 2: THE STRENGTHENED ENERGY TMS 2009**

The strengthened Energy TMS was very short-lived, less than one year. It was first devised when economy-related ministers gathered in April 2009 and discussed how to overcome the global financial crisis that had begun with US mortgage defaults in 2008. The general plan to strengthen the TMS differentiated between three

implementation periods: an introduction (3 years) starting in 2010, followed by an expansion (5 years) and a stabilization period (5 years). The year of 2009 was set as an interim or experimental period for the system, before the 'real' implementation phase started. However, the regulatory setting established in this year was included in the GHG Energy TMS in 2010. Therefore, the strengthened Energy TMS set the policy infrastructure and institutional frame for future developments.

During the interim year of 2009, companies had to choose between two methods of setting their targets: the absolute energy amount or the intensity-based method. There had been a serious debate regarding both methods, since they have a crucial impact on the function of the whole system and the actual reductions of a specific installation. The absolute energy amount method puts a cap on the energy consumption of an installation based on its average energy consumption over the past three years.<sup>18</sup> It is very simple and easy to apply to all facilities. However, some operators, particularly in the power generation business, such as electricity or heat production companies, opposed this method because their production activities, and correspondingly their energy usage, depend heavily upon actual demand. Fixed energy caps based on previous consumption could be inappropriate to meet high future demand in the case of an economic boom. The operators argued that such a cap on the energy supply could choke economic activities as a whole.

Instead, power plants argued that they should be allowed to apply the intensity-based method. This method counted energy based on the actual consumption in a given year. If energy demand increases, for example due to an economic boom, the energy target of a specific installation would become flexible. The amount of the increase can be established in two ways. Either growth in the national GDP is taken into account, which means all producers will generally have the same raise in allowable emissions, or actual energy input data is used, which allows installation-specific adjustments. As a compromise, the government planned to set the absolute energy amount method as a primary standard, but to allow specific types of installations, such as electricity and heat producing facilities, to apply the intensity-based method.

During the interim year, the government allowed companies to submit their targets in a voluntary manner, and usually applied a 1~3% reduction compared to the average energy consumption over the past three years. The government planned to gradually tighten the targets later in order to align them with the nation's mid- and long-term reduction goals. Also, the first time in the TMS' history, the government tried to introduce on-site evaluation processes of companies' implementation status and achievements.

The MKE, in charge for the TMS, invited CEOs from 38 companies with 47 installations to discuss agreements on how to achieve the reductions. The operators had to agree on targets for their installations that followed the government's guidelines and report on their management situations. To support application of the correct procedures, the government hired energy experts who visited each installation and verified the amount of energy consumption on site. Based on the data from these experts, the government and operators negotiated at least three times to set targets and finally agreed to a total reduction of 1,320,000 TOE in 2010, the first year of the introduction period (Im et. al. 2010, 165).

In sum, in this one year experimentation phase, the voluntary and rather ineffective Energy TMS (1998~2008) was renovated to become the strengthened Energy TMS (during 2009). The government's target



was, however, still focused solely on energy usage without specific concerns for GHG emissions. Yet, this first period established valuable infrastructure, systematic procedures, institutional settings, and a database on energy consumption at the company level, all highly useful for further development of the TMS.

#### **4.4 PHASE 3: ENERGY AND GHG TMS 2010-2014**

After 2009, the energy-only TMS of the previous years was transformed into a broad TMS covering both GHG emissions and energy consumption. As such, the Ministry of Environment (MoE) started to play a leadership role, competing with the MKE, who had been in charge of the original system. In line with the Korean business groups, the MKE did not want to proceed rapidly with GHG emissions regulation. However, due to pressure from the administration's leadership, GHG reduction goals were added to the original scheme to some degree, and the MoE became a strong competitor of the MKE.

In consequence, responsibilities for this phase were split. The manufacturing industries and electricity utilities came were overseen by the MKE, while the MoE was given the right to supervise activities in the waste sector. Construction and transportation were directed by the Ministry of Land, Transport and Maritime Affairs, and the Ministry for Food, Agriculture, Forestry and Fisheries was in charge of agriculture and livestock. Each governmental body was responsible for the selection of the relevant installations as well as building and managing the GHG inventories in their areas. They also lead the consultations that resulted in the setting of the reduction targets of each installation and yearly progress evaluations.

The MoE was furthermore given the general responsibility for the system, particularly with a right to meta-evaluate other ministries' management activities and appoint the evaluating companies to inspect and verify the managed installations' achievements. The MKE, however, still possessed direct power and resources to control the manufacturing industries and electricity producers, which account for more than 60% of Korea's total emissions. In consequence, bureaucratic struggles between the two ministries occurred and a higher authority was necessary to secure the collaboration and coordination of the various administrative branches. Therefore, the just in 2009 established Presidential Committee on Green Growth (PCGG) was given the authority to control the ministries. This new institution reported directly to the President and was co-chaired by the prime minister together with a civil expert appointed directly by the President<sup>19</sup>. The PCGG decided the overall reduction amount and allocated shares to each sector. It played a decisive role in securing the integration of GHG reduction goals throughout the Korean ministerial systems and to in ensuring coordinated decisions.

Like the TMS in the past, the new GHG TMS applied the absolute energy amount method as the basic standard to evaluate an installation's energy consumption. And as before, specific installations, especially from the electricity and heat producing sector with the potential to interfere with national growth, were allowed to use the intensity-based method.

At the beginning of the introduction period in 2010, the reformed GHG TMS would include installations using more than 500,000 tonnes of oil equivalent (TOE) a year. It would gradually expand to cover those consuming more than 50,000 and then 20,000 TOE as well. From June to August 2010, the Korean government collected and verified data on the average energy consumption and GHG emissions from the previous three

years (2007-2009) for companies and installations that were, based on the information gathered in the experimental period of 2009, potential candidates for the TMS. In September 2010, the government first selected 470 installations, but after receiving appeals the government ultimately decided on 458 installations. According to the planned three-year cycle, the appointed entities had to set their targets through negotiations with the government in 2011 and begin to implement them in 2012. When setting a target, the government took the particular individual situation of each business into consideration: past GHG emissions, energy consumption trends, current technological level, the degree of international competition in the sector<sup>20</sup>, etc.

In 2011, the number of installations covered by TMS was extended. Based on the same standards as in 2010, the government picked 483 entities whose total emissions amount was around 60% of the Korean total. For companies, the threshold for inclusion in the system was emitting a total of 125,000 tonnes CO<sub>2</sub> or consuming 500 Terajoules (TJ) of energy, while for single installations the threshold was 25,000 tonnes CO<sub>2</sub> or 100 TJ<sup>21</sup>. In 2012, around 540 to 570 entities are likely to be selected, and the thresholds will be tightened to 87,500 tonnes CO<sub>2</sub> for companies and 20,000 tonnes CO<sub>2</sub> for installations.<sup>22</sup>

#### **4.5 PHASE 4: ETS 2015-...**

According to the current plan, the Korean ETS will start in January 2015 and it will follow the EU's path with a similar process of implementation. During the first phase (2015~2017) of the ETS, all of the allowances will be distributed for free. During the second phase (2018~2020) 3% will be auctioned, rising to more than 10% in the third phase (2021~2025).<sup>23</sup> Once again, business groups strongly opposed the plan and requested that the government delay the allowance auctioning until 2020 at least. There were also renewed bureaucratic struggles between the MoE and the MKE for the leadership position in the new system; the MoE won and thus will be responsible for the ETS. How the Korean government actually implements the planned ETS will have to be the subject of future studies.

### **5. COMPARISON**

The implementation of either an ETS or a TMS has to overcome several crucial problems. One of the most basic is the institutional resilience of the system as well as the resistance of specific actors against the introduction of such an innovation. More technical, but nevertheless critical, is the problem of how to integrate hundreds or thousands of operators of GHG emitting installations into a system that is actually able to successfully reduce CO<sub>2</sub> output. Both the EU and Korea attempted to meet the challenge of these problems through regulations that must be explained in light of the different contexts in which the two systems operate.

In the EU, environmental protection per se and as a public task appears to have been widely accepted when the decisions regarding an ETS were made. In particular, green parties had significant influence. In Germany, for example, a green party was in the coalition government at the time the ETS decision was made. A total rejection of climate protection policy, as demonstrated by the George W. Bush administration, was politically unacceptable for the great majority of EU citizens. To the European business representatives who resisted a

carbon tax during the early 1990s, the combination of environmental protection with a market-based approach made an ETS tolerable, if only as the lesser of two evils. The acceptance among the operators of the targeted installations was at least high enough to result in their cooperation during the implementation phase of the ETS through 2007. That they received the emission allowances for free and in unnecessary high numbers, obviously contributed to the comparatively smooth implementation. That the operation of the ETS would lead to further economic growth, new business opportunities, and more jobs, was also important, though secondary.

If we apply the different regulatory modes introduced in section 2 to the EU case, the planning, implementation and running of the EU ETS clearly shows a multi-level pattern, with a certain amount of supervision and control competences at the supranational level, but with significant competences at the national levels as well. Even though the system was supposed to introduce a 'carbon market', one of the results of the competence sharing was, as described above, that the market mechanisms did not initially function well, due to the significant over-allocation of allowances. This rendered the system's strong penalty regulations – possible due to the strong public demand for ambitious environmental targets – similarly useless. From a functional perspective, the system has failed thus far. It remains to be seen whether the centralisation of the system, as planned from 2013 on, can change this track record. However, the planned changes will not automatically solve the potential problem that economic volatility can also render the market mechanism dysfunctional.

In Korea, environmental groups were much weaker and business interests much more influential than in the EU, comparatively. Without strong initial public support or opposition, President Lee Myung-bak took initiative, promoting his National Green Growth Strategy and pushing for a GHG reduction regime in 2009, which has turned out to be quite different from the EU ETS. Firstly, the government's primary counterpart for communication and compromise was business groups, while the general public was generally excluded. Secondly, in the absence of strong public support for green policies, the potential in terms of economic growth, business opportunities, and job creation was emphasised much more strongly than in the EU. In particular, official publications never fail to mention that the policies will assure future increases in Korean GDP and deliver new jobs<sup>24</sup>. Thirdly, reflecting the different mix of actors in support or opposition of a GHG reduction regulation, a competition within the national administration between different ministries occurred. That made it necessary to create a new body that outranked the others and secured the necessary administration-wide cooperation. Fourthly, instead of establishing a new regulatory framework, Korea remodelled the decade-old energy management system by adding GHG regulations. Without broad public recognition of the need for a strong climate protection regulation, the introduction of a completely new system against the opposition of business interests appears to have been politically impossible. By utilizing the familiar institutional structure of the TMS, the government minimized the cost of implementation and reduced resistance from the business community. That the strength of the penalty regulation in the new TMS remained disappointing further contributed to raise the acceptance of the system among its opponents.

In reflection of the 'developmental state mode' however, as introduced in section 2, the Korean government clearly fails to exercise the influence defining the developmental state. The implementation of an ETS was blocked by the business interests, and the modified TMS was the compromise the Lee Myung-bak

administration had to accept. That later the decision was taken to implement an ETS in 2015 could be seen as a late victory. But given the strong role the Korean presidency exercises within the Korean system, it is not guaranteed that the next president, entering office in 2013, will actually follow through with such a system. Against this backdrop, the Korean system corresponds more closely to the governance mode as well due to the strong notion of direct negotiations between governmental and non-governmental actors. The system's introduction of yearly 'discussion circles' comprising several negotiation rounds in which the government and the CEOs directly debate and agree on possible reduction targets is not the usual way decisions are made in Korea's basically Confucianist-hierarchical culture.

The effectiveness of the TMS in terms of actual reduction is, similar to the EU case, not yet empirically proven. The economic downturn following the global financial crisis reduced the energy consumption of Korean businesses, so the reduction goals based on the past do not currently impose heavy burdens on the participants; of course, a failure to meet the targets is not a burden either. Theoretically, however, a system like the TMS could react much faster to exogenous shocks than an ETS, as top-down target adjustment becomes easier the less market and the more hierarchy is given in a system<sup>25</sup>.

The big difference between the EU and the Korean cases lies in the logic of the regulatory instruments that are supposed to achieve reductions: the EU utilizes market instruments, while Korea instead chose installation-specific reduction goals implemented in a top-down style. This has significant consequences, especially for any potential direct collaboration between the systems, as well as their cooperation at the global level, as will be further elaborated in the conclusions.

## **6. CONCLUSIONS**

We have identified two potential areas for cooperation between the EU and South Korea: direct exchange and collaboration between the political and/or private actors of the two systems, as well as cooperation on the international and global, respectively, level.

Concerning the area of prospective direct collaboration:

- a) Given Korea's decision to implement an ETS in 2015, there are obviously many possibilities to learn from the EU case. Because of different political and cultural backgrounds, it will not be feasible to transfer the EU system without modifications. However, the EU has developed valuable expertise, for example on ways to select installations, certify reduction achievements, and set up trading facilities. Furthermore provide the EU's difficulties in beginning and maintaining actual market-based trading, especially the problems with allocations of allowances, securing the trading processes, and effectively reacting to exogenous shocks, useful lessons. The EU can supply experience on methods to integrate the Korean ETS into a global scheme as well, especially as concerning the allowances created by CDM projects. Furthermore, both systems can quite easily establish procedures that allow the trade of EUAs with Korean allowances, once the Korean ETS is solidly in place, and later with other ETS (see section g below).

- b) Another possibility for direct collaboration would be to equip the Korean TMS with the function to create Korean allowances that are tradeable in the EU ETS, even before the implementation of a Korean ETS. Key pre-conditions would be the establishment of reliable monitoring and verification systems between the EU and Korea to ensure that allowances created under the Korean TMS actually stem from genuine CO<sub>2</sub> reduction. The Korean TMS is already based on reductions against a BAU scenario, and the CDM works on basically the same method. As such, trade of Korean allowances within the EU ETS could essentially just follow the CDM procedures, but without the involvement of the UNFCCC oversight facilities.

Furthermore, the EU could apply the Korean TMS as a regulatory model that can be transferred to other contexts:

- c) The EU could use the TMS model in its foreign relations, especially in the Enlargement Policy, the European Neighbourhood Policy (ENP), and Development Cooperation Policy. In the Enlargement Policy, the TMS could be used as a systematic tool to prepare the applicant state for the EU ETS. In the ENP and the Development Cooperation, the EU could integrate the TMS to its foreign policy instruments and help third countries in the neighbourhood and elsewhere mitigate CO<sub>2</sub> emissions. Especially the ENP states could be potential sources for reduction units tradeable in the EU ETS as described in section b) above.
- d) The TMS could be used inside the EU as well. As a system that basically integrates actors from various social areas and provides them with a framework for negotiation and common target setting, it might be an interesting tool to foster CO<sub>2</sub> mitigation activities among actors not included within the EU ETS in the first place. To use one concrete example, many EU cities are already active in CO<sub>2</sub> mitigation (Niederhafner 2012), the Covenant of Mayors<sup>26</sup> is just one of the many networks founded to that end. The commitments possible within a TMS could enhance and foster their activities, and provide a reliable framework for mid- and long-term measures.

There is also significant potential for cooperation at the global level. The EU's leading role in climate protection was initially relatively unintended, developing by chance due to the conservative leadership in the USA. In contrast, the Korean intention to use its climate protection regulations to advance its interests and position in the global system is literally hardwired into its emissions and energy policies. One of the ten core policy tasks within the National Green Growth Strategy is to become a global leader and role model in these policy areas<sup>27</sup>. The EU and Korea could develop a strategic approach to strengthen each other's influence and support common goals within the global climate change negotiations. Specifically, they could support each other in the following areas:

- e) The EU could promote the Korean TMS as a best-practice model to be implemented by developing/emerging states with insufficient market systems and weak institutions that are economically unable and/or politically unwilling to implement an ETS, for example as a Nationally Appropriate Mitigation Action (NAMA) best practice. It would strengthen the argument, obviously, if the EU herself were to use the TMS model as described in sections c) and d) above. The EU could provide the funding and Korea the know-how, which might open new room for negotiations between developing, emerging and developed nations within the UNFCCC framework.
- f) Once the trade of Korean TMS allowances in the EU ETS is possible, as described in section b) above, other non-annex I countries could be integrated into EU ETS trading as well if they follow the same principles,

beginning with establishing a TMS. This would allow, if the regulations are set accordingly, integration of the emerging economies into a global trade system without forcing them to implement a fully-fledged ETS. CDM activities could be limited to the least-developed countries, meaning that CDM investments eventually would be channelled into the poorest nations which are so far hardly hosting such projects. To balance the problem that the competition of such 'TMS credits' would decrease CDM investments even further, the latter could be endowed with a credit bonus if they actually meet the sustainability/poverty reduction criteria.

- g) Korea could support the EU in international negotiations towards agreements that provide a better foundation for a global ETS – within or outside the UN framework. If a post-Kyoto agreement and with it a top-down regulation of the global carbon market stays out of reach, the market will be established in a bottom-up style, by connecting the separated systems with each other. This is assuming that the EU ETS will result in a functioning CO<sub>2</sub> market while actually capping GHG emissions in its next phase and that the ETS' in Australia, New Zealand, Tokyo, and Switzerland, are also functioning well. Given that many Asia-Pacific nations like China, Taiwan, and South Korea, as well as some North American subnational territories decided to implement ETS' as well, the fundamental condition – having separate systems that could trade with each other in first place - for the establishment of a global carbon market is basically set in a few years. To be among the first-movers to support such a system will benefit both the EU and South Korea, both in terms of shaping the necessary regulations in their interest as well as enhancing their global soft power.

### **List of Abbreviations**

BAU	Business As Usual
CDM	Clean Development Mechanism
CO <sub>2</sub>	Carbon Dioxide
CO <sub>2</sub> e	Carbon Dioxide equivalent
EEA	European Environment Agency
ENP	European Neighbourhood Policy
ETS	Emission Trading System
EU	European Union
EUA	EU Allowance
EUA	EU Aviation Allowance
EU Commission	European Commission
EU Council	Council of the European Union
IMF	International Monetary Fund
JI	Joint Implementation
Korea	Republic of Korea
Mt CO <sub>2</sub> e	Mega tonne (10 <sup>6</sup> ) Carbon Dioxide Equivalent
MKE	Ministry of Knowledge and Economy, Republic of Korea

MoE	Ministry of Environment, Republic of Korea
MS	Member States
NAMA	Nationally Appropriate Mitigation Action
NAP	National Allocation Plan
TJ	Terrajoule
TMS	Target Management System
TOE	Tonnes of Oil Equivalent
Tonne	Metric Tonne
GHG	Greenhouse Gas
ROK	Republic of Korea
UK	United Kingdom
UNFCCC	United Nations Framework Convention on Climate Change
USA	United States of America
US-\$	US Dollar

## Endnotes

<sup>1</sup>This work was supported by the Research Settlement Fund for new faculty of SNU and the European Commission. We owe special thanks for valuable advice to Axel Marx, Chang Sang Cho, our interviewees, Sean Blakeley, and Ashley Hess. The reminding mistakes are solely the responsibilities of the authors. Comments are welcomed, please contact [niederhafner@snu.ac.kr](mailto:niederhafner@snu.ac.kr).

<sup>2</sup> All numbers from [http://ec.europa.eu/clima/policies/ets/index\\_en.htm](http://ec.europa.eu/clima/policies/ets/index_en.htm), 17 Dec. 2012 and <http://www.gir.go.kr/eng/og/hm/nc/a/OGHMNCA010.do>, 12 Dec. 2012.

<sup>3</sup> The United States Energy Information Administration (EIA), "International Energy Statistics," <http://www.eia.gov/cfapps/ipdbproject/iedindex3.cfm?tid=90&pid=44&aid=8&cid=regions.&syid=2006&eyid=2010&unit=MMTCD>, accessed 28 Nov. 2012.

<sup>4</sup> Carbon Dioxide equivalent, the basic unit of the Kyoto Protocol reduction goals. In addition to CO<sub>2</sub>, the Kyoto Protocol addresses several other gases, like methane, which have specific global warming potentials. To simplify, emissions and reductions of these gases are transferred to their equivalents in tonnes of CO<sub>2</sub> [http://www.grida.no/publications/other/ipcc\\_tar/?src=/climate/ipcc\\_tar/wg1/247.htm](http://www.grida.no/publications/other/ipcc_tar/?src=/climate/ipcc_tar/wg1/247.htm), 3 Sept. 2012.

<sup>5</sup>Besides the rather than political and cultural reasons mentioned here, there are also numerous economic arguments as to why a market mechanism is better suited to achieve global CO<sub>2</sub> emissions reductions than traditional regulatory approaches. For a discussion of these arguments, see e.g. Hepburn 2007; Grover 2008; Helm and Hepburn 2009; Mathys and Melo 2011; Stavins and Aldy 2011.

<sup>6</sup> see e.g. Convery 2008

<sup>7</sup> An overview on EU climate policy is given by [http://ec.europa.eu/clima/policies/ets/oversight/index\\_en.htm](http://ec.europa.eu/clima/policies/ets/oversight/index_en.htm), 30 Aug. 2012.

<sup>8</sup> [http://ec.europa.eu/clima/policies/ets/allocation/2005/index\\_en.htm](http://ec.europa.eu/clima/policies/ets/allocation/2005/index_en.htm), 30 Aug. 2012.

<sup>9</sup> The deadline to implement the latter was 1 January 2007, meaning that the ETS accounting infrastructure actually had to be in place years earlier (UNFCCC 2008, 47–54).

<sup>10</sup> [http://www.dehst.de/DE/Emissionshandel/Termine/termine\\_node.html](http://www.dehst.de/DE/Emissionshandel/Termine/termine_node.html), 30 Aug. 2012

<sup>11</sup> Except for Denmark, since they implemented a company-level reporting system with their previous ETS.

<sup>12</sup> Due to limited data availability, we will refer in the following basically to the EUA future prices and to spot prices only where explicitly mentioned. Both prices developed very similarly and showed the same dynamics.

<sup>13</sup> For example, see the speech at the Korea's Independence Day in 2008 ([http://www.president.go.kr/kr/president/speech/speech\\_view.php?uno=92&article\\_no=4&board\\_no=P04&search\\_key=&search\\_value=&search\\_cate\\_code=&order\\_key1=1&order\\_key2=1&cur\\_page\\_no=1&cur\\_year=2008&cur\\_month=08](http://www.president.go.kr/kr/president/speech/speech_view.php?uno=92&article_no=4&board_no=P04&search_key=&search_value=&search_cate_code=&order_key1=1&order_key2=1&cur_page_no=1&cur_year=2008&cur_month=08), 2 Nov. 2008) or his keynote speech at the Copenhagen UNFCCC 2009, [http://english.president.go.kr/pre\\_activity/speeches/speeches\\_view.php?uno=2281&board\\_no=E03&search\\_key=1&search\\_value=copenhagen&search\\_cate\\_code=&cur\\_page\\_no=1](http://english.president.go.kr/pre_activity/speeches/speeches_view.php?uno=2281&board_no=E03&search_key=1&search_value=copenhagen&search_cate_code=&cur_page_no=1), 20 Jan. 2010).

<sup>14</sup> Interview with a Director at the Ministry of Environment. Date: 25 May 2012.

---

<sup>15</sup> Article 42.1 Basic Law on Low Carbon, Green Growth: "Mid- and Long-term targets should be set (...) and necessary implementation methods should be devised to achieve (...) 1. Greenhouse Gases Reduction Target 2. Energy Saving Target and Energy Efficiency Target".

<sup>16</sup> Interview with a Director at the Presidential Committee on Green Growth. Date: 22 May 2012

<sup>17</sup> <http://www.bloomberg.com/news/2012-05-03/south-korean-parliament-approves-carbon-trading-system.html>, 3 Aug. 2012.

<sup>18</sup> Companies can choose three out of the last four years to calculate their average usage.

<sup>19</sup> Presidential Committee on Green Growth, <http://www.greengrowth.go.kr/english>, 5 Sept. 2012.

<sup>20</sup> Information from a member of the Presidential Committee on Green Growth.

<sup>21</sup> Regarding the standard for managed entities in the following years, see 기후변화홍보포털, <http://www.gihoo.or.kr/portal/main/index.jsp>, 3 Sept. 2012.

<sup>22</sup> 울산매일, "온실가스·에너지 목표관리제 시행의 의미", April 27, 2012, <http://www.iusm.co.kr/news/articleView.html?idxno=245836>, 4 Sept. 2012.

<sup>23</sup> 그린데일리, "배출권거래제, 시행령 두고 팽팽," August 22, 2012, <http://www.greendaily.co.kr/news/articleView.html?idxno=21004>, 5 Sept. 2012.

<sup>24</sup> For a critical review of the Korean National Green Growth Strategy, see Kalinowski and Cho 2012.

<sup>25</sup> Another case in point is Japan's energy efficiency programme (see Nordqvist 2006).

<sup>26</sup> [http://www.covenantofmayors.eu/index\\_en.html](http://www.covenantofmayors.eu/index_en.html), 28 Nov. 2012.

<sup>27</sup> [http://www.greengrowth.go.kr/english/en\\_information/en\\_news/en\\_trends/userBbs/bbsView.do](http://www.greengrowth.go.kr/english/en_information/en_news/en_trends/userBbs/bbsView.do), 31 Sept. 2011.



## References

Bache, I. 2008: "Europeanization and multi-level governance: Empirical findings and conceptual challenges." ARENA Working Papers.

Benz, A. 2008: "The Evolution of EU Multilevel Governance." Governance, Policy-Making and System-Building in the EU", Paper presented at the 4<sup>th</sup> ECPR conference 6-8 September.

Carbon Trade Watch 2011: "EU ETS: failing at the third attempt". Barcelona.

Convery, F. J. et al. 2008: "The European Carbon Market in Action: Lessons from the First Trading Period". Report No. 162. Cambridge: MIT Joint Program on the Science and Policy of Global Climate Change.

Dornau, R. 2005: "The Emissions Trading Scheme of the EU." in D. Freestone and C. Streck (ed.), Legal aspects of implementing the Kyoto Protocol Mechanisms: Making Kyoto work, Oxford University Press: 412-425.

EEA – European Environment Agency 2011: "GHG emission trends and projections in Europe 2011". Copenhagen.

Ellerman, A. D., and B. K. Buchner 2007: "The European Union emissions trading scheme: origins, allocation, and early results." Review of Environmental Economics and Policy 1 (1): 66–87.

Ellerman, A. D., and P. L. Joskow. 2008: "The European Union's Emissions Trading System in perspective." PEW Center on Global Climate Change.

EU Com - EU Commission 1999: "Preparing for Implementation of the Kyoto Protocol". Communication to the Council and the Parliament COM (1999) 230, Brussels.

EU Com - EU Commission 2000: "Green Paper on greenhouse gas emissions trading within the European Union". COM (2000) 87 final. Brussels: Office for Official Publications of the European Communities.

EU Com - EU Commission 2009: "The EU Emissions Trading Scheme". Brussels.

German Federal Ministry for the Environment, nature Conservation, and Nuclear Safety 2004: National Allocation Plan for the Federal Republic of Germany 2005-2007. Berlin: Germany.

Grover, V. I. (ed.) 2008: "Global warming and climate change: Ten years after Kyoto and still counting". Enfield, NH, Science Publ.

Helm, D. and C. Hepburn (eds.) 2009: The Economics and Politics of Climate Change, Oxford University Press.

Heinelt, H. and S. Niederhafner 2008: "Cities and Organized Interest Intermediation in the EU Multi-Level System", European Urban and Regional Studies 15 (2): 173-187.

Hepburn, C. 2007: "Carbon trading: a review of the Kyoto mechanisms." *Annu. Rev. Environ. Resour.* 32: 375–393.

Hooghe, L., and G. Marks. 2003: "Unravelling the Central State, But How?: Types of Multi-level Governance". *American Political Science Review* 97 (2): 233-243.

Hyun, Joonwon and Gil, Jungyu, 2011: "A Study on Improvement of the Administrative Guideline for the Greenhouse Gas Target Management System (Korean)," *Green Growth Study*.

Johnson, C.A. 1995: "Japan, who governs? : the rise of the developmental state". New York.

Im, Sangkug, et. al. (2010): "Research for the Energy Target Setting Program (Korean)," Paper at the Korea Energy and Climate Change Conference, Seoul 2010.

Kalinowski, T. 2008: "Korea's recovery since the 1997/98 financial crisis: the last stage of the developmental state." *New Political Economy* 13 (4): 447–462.

Kalinowski, T., and H. Cho. 2012: "Korea's Search for a Global Role between Hard Economic Interests and Soft Power." *European Journal of Development Research* 24 (2): 242-260.

Korean Ministry of Environment 2011: "Administrative Guideline for the Greenhouse Gas Energy Target Management System," Seoul.

Korean Parliament 2009: "Basic Law on Low Carbon, Green Growth" (Korean), <http://www.law.go.kr/lsInfoP.do?lsiSeq=112447&efYd=20120415#0000>, 3 Sept. 2012.

Kruger, J., W. E. Oates, and W. A. Pizer. 2007: "Decentralization in the EU emissions trading scheme and lessons for global policy." *Review of Environmental Economics and Policy* 1 (1): 112–133.

Marks, G., L. Hooghe, and K. Blank. 1996: "European Integration from the 1980s: State-Centric v. Multi-level Governance." *JCMS: Journal of Common Market Studies* 34 (3): 341–378.

Mathys, N. A., and J. de Melo. 2011: "The Political Economy of Climate Change Policies: Political Economy Aspects of Climate Change Mitigation Efforts." Working Paper, Fondation pour les Etudes et Recherches sur le Developpement International.

Niederhafner, S. 2012: "Functions of Transnational City Networks in Europe and Asia", Working Paper, Seoul National University, Center for EU Studies, forthcoming.

Nordqvist, J. 2006: "Evaluation of Japan's Top Runner Programme," Working Paper, Energy Intelligence for Europe Programme, EIE-2003-114.

Peters, B. G., and J. Pierre. 2001: "Developments in intergovernmental relations: towards multi-level governance." *Policy and Politics* 29 (2): 131–136.

Presidential Committee on Green Growth 2012: "The 16th Green Growth Committee and the 7th Review Committee on Implementation Status (Korean)". Seoul.

Scharpf, F.W. 1999 "Games Real Actors Play: Actor-Centered Institutionalism in Policy Research". Boulder, CO.

Stavins, R. N., and J. E. Aldy. 2011: "The Promise and Problems of Pricing Carbon: Theory and Experience." The Journal of Environment & Development 21 (2): 151-180.

UBA – German Federal Environmental Administration 2012: "Auctioning of Emission Allowances in Germany", Periodical Report: Second Quarter 2012. Berlin.

UNEP – United Nation Environment Programme 2010: "Overview of the ROK's National Strategy for Green Growth". Geneva.

UNFCCC – United Nations Framework Convention on Climate Change 2008: "Kyoto Protocol Reference Manual". Bonn.

Woo-Cummings, M. 1999: "The developmental state". Cornell studies in political economy. Ithaca, N.Y.

World Bank 2007: State and Trends of the Carbon Market 2007. Washington, D.C.

World Bank 2009: State and Trends of the Carbon Market 2009. Washington, D.C.

World Bank 2012: State and Trends of the Carbon Market 2012. Washington D.C.

### Newspapers

경향신문, "온실가스 목표관리제' 있으나 마나", 15 March 2011, [http://news.khan.co.kr/kh\\_news/khan\\_art\\_view.html?artid=201103152246445&code=940701](http://news.khan.co.kr/kh_news/khan_art_view.html?artid=201103152246445&code=940701), 4 Sept. 2012.

그린데일리, "배출권거래제, 시행령 두고 팽팽," August 22, 2012, <http://www.greendaily.co.kr/news/articleView.html?idxno=21004>, 5 Sept. 2012.

이투뉴스, "관리업종 분류 '주먹구구'", March 21, 2011, <http://www.e2news.com/news/articleView.html?idxno=49451>, 4 Sept. 2012.

이투뉴스, "명세서 제출률 '97%' 어쨌길래...", June 9, 2011, <http://www.e2news.com/news/articleView.html?idxno=52327>, 4 Sept. 2012.

울산매일, "온실가스·에너지 목표관리제 시행의 의미", April 27, 2012, <http://www.iusm.co.kr/news/articleView.html?idxno=245836>, 4 Sept. 2012.

### Websites

[http://ec.europa.eu/clima/policies/ets/allocation/2005/index\\_en.htm](http://ec.europa.eu/clima/policies/ets/allocation/2005/index_en.htm), 30 Aug. 2012

[http://ec.europa.eu/clima/policies/ets/index\\_en.htm](http://ec.europa.eu/clima/policies/ets/index_en.htm), 17 Dec. 2012

[http://ec.europa.eu/clima/policies/ets/oversight/index\\_en.htm](http://ec.europa.eu/clima/policies/ets/oversight/index_en.htm), 30 Aug. 2012.

<http://www.bloomberg.com/news/2012-05-03/south-korean-parliament-approves-carbon-trading-system.html>, 3 Aug. 2012.

[http://www.covenantofmayors.eu/index\\_en.html](http://www.covenantofmayors.eu/index_en.html), 28 Nov. 2012

[http://www.dehst.de/DE/Emissionshandel/Termine/termine\\_node.html](http://www.dehst.de/DE/Emissionshandel/Termine/termine_node.html)

<http://www.eea.europa.eu/data-and-maps/figures/eua-future-prices-200520132011>, 30 Aug. 2012.

<http://www.eia.gov/cfapps/ipdbproject/iedindex3.cfm?tid=90&pid=44&aid=8&cid=regions.&syid=2006&eyid=2010&unit=MMTCD>, accessed 28 Nov. 2012

[http://english.president.go.kr/pre\\_activity/speeches/speeches\\_view.php?uno=2281&board\\_no=E03&search\\_key=1&search\\_value=copenhagen&search\\_cate\\_code=&cur\\_page\\_no=1](http://english.president.go.kr/pre_activity/speeches/speeches_view.php?uno=2281&board_no=E03&search_key=1&search_value=copenhagen&search_cate_code=&cur_page_no=1), 20 Jan. 2010

<http://www.gihoo.or.kr/portal/main/index.jsp>, 기후변화-홍보포털(Stop Global Warming Save Environment), 3 Sept. 2012.

<http://www.gir.go.kr/eng/og/hm/nc/a/OGHMNCA010.do>, 12 Dec. 2012.

<http://www.greengrowth.go.kr/english>, Presidential Committee on Green Growth, 5 Sept. 2012.

[http://www.greengrowth.go.kr/english/en\\_information/en\\_news/en\\_trends/userBbs/bbsView.do](http://www.greengrowth.go.kr/english/en_information/en_news/en_trends/userBbs/bbsView.do), 31 Sept. 2011

[http://www.grida.no/publications/other/ipcc\\_tar/?src=climate/ipcc\\_tar/wg1/247.htm](http://www.grida.no/publications/other/ipcc_tar/?src=climate/ipcc_tar/wg1/247.htm), 3 Sept. 2012.

[http://www.president.go.kr/kr/president/speech/speech\\_view.php?uno=92&article\\_no=4&board\\_no=P04&search\\_key=&search\\_value=&search\\_cate\\_code=&order\\_key1=1&order\\_key2=1&cur\\_page\\_no=1&cur\\_year=2008&cur\\_month=08](http://www.president.go.kr/kr/president/speech/speech_view.php?uno=92&article_no=4&board_no=P04&search_key=&search_value=&search_cate_code=&order_key1=1&order_key2=1&cur_page_no=1&cur_year=2008&cur_month=08), 2 Nov. 2008.

## CAMPUS ASIA AND ITS IMPLICATIONS FOR UNIVERSITY COOPERATION IN ASIA AND EU: THE KOREAN PERSPECTIVE

SANG-DUK CHOI

### 1. INTRODUCTION

In the rise of the East Asian economy in the 21<sup>st</sup> century, regional cooperation between East Asian countries has become important agenda. The announcement of the Trilateral Cooperation VISION 2020 at the 3<sup>rd</sup> Korea-China-Japan Trilateral Summit in 2010 was suggested as a blueprint for future trilateral partnership in economic cooperation, environmental protection, and expansion of human and cultural exchange.

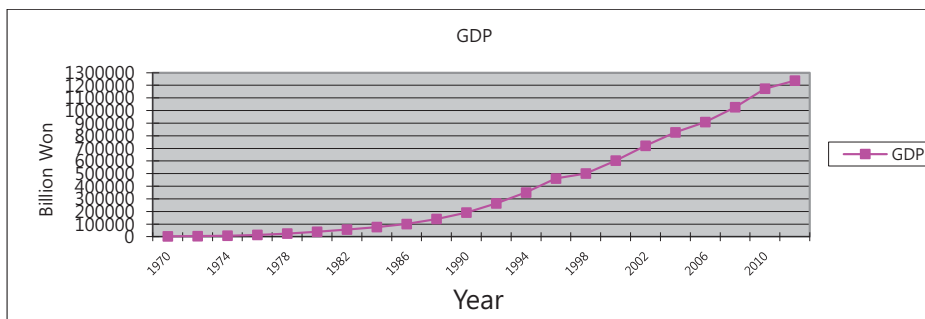
The effort to bring the three major countries in East Asia together is an important move in securing the peace and prosperity of the region considering the recent bitter historical experiences. The Korean government, geographically located between the two powerful countries, acknowledges the critical role in producing any positive progress in the partnership. Hence, the Korean government believes in the importance of the expansion of personnel exchange in promoting friendly relations and mutual understanding. This is seen as a precondition for the enhancement of regional economic and social development. In this regard, the government made the initial effort to create CAMPUS Asia (Collective Action for Mobility Program of Universities Students).

### 2. PRESENT SITUATION OF KOREAN HIGHER EDUCATION

#### 2.1 CURRENT ISSUES IN KOREAN HIGHER EDUCATION

In many developed countries, the governments have stressed the wider economic role of higher education as a powerful source for national growth in the rise of a knowledge-based economy. In South Korea, the growth of higher education supported the national development by supplying educated elite. The growth of GDP, as seen in <Figure 1>, goes along with the steep increase of the progression rate from secondary to higher education (as seen in <Figure 2>). It is acknowledged that the rapid expansion of education in general and higher education in particular responded to the increasing demand for high skills successfully along with the industrial development.

Figure 1. The growth of GDP between 1970 and 2011



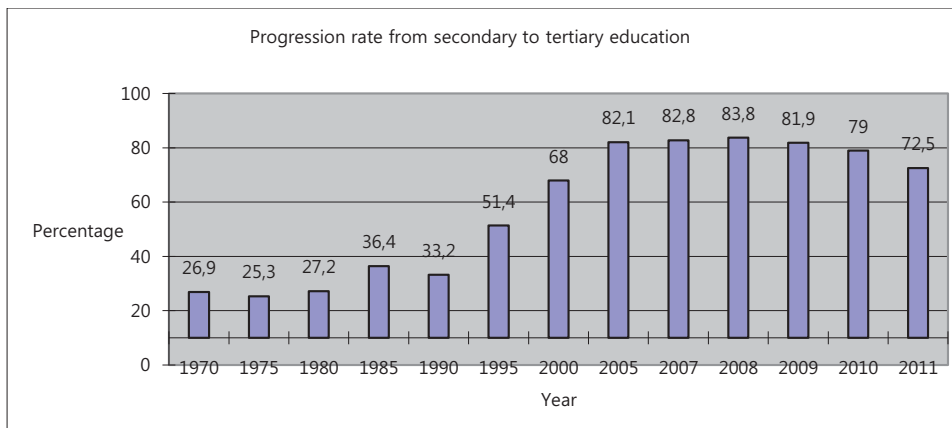
Source: <http://www.kosis.kr>

However, during the last two decades, the government made a particular effort to achieve a qualitative development in education. There have been a few changes within the Korean society, which raised attention to the improvement of the quality of higher education.

Firstly, the arrival of a democratic government in 1993 turned the public attention to a better quality of social and educational systems. The Presidential Commission on Education reported *Education Reform for the 21<sup>st</sup> Century*, stressing the idea of 'globalization' (*Segyehwa*) and the 'information society' as the main background for the proposal of an 'open and lifelong education society' in 1995 (PCER, 1997). By the 1995 Education Reform, the government delegated power to individual higher education institutions in their admission and management. The government also promoted the diversification and specialization of higher education in order to improve the quality of teaching and research activities in universities. As a result, the deregulation of the university establishment and the improved autonomy of institutions' management allowed the expansion of private institutions, supporting the growth of participation in higher education.

Secondly, in the rise of a knowledge-based society, the Korean government emphasized the importance of research activities in universities. Many elite universities were asked to invest in research and development in order to increase the commercial use of R&D results. For example, the government supported the Brain Korea Project 21 (BK21) since 1999 in order to promote the research activities in universities and to improve the quality of research to meet the international standards. Especially in the last decade, Korean universities have benchmarked the world top universities and implemented a strategic policy to enhance the research activities.

Figure 2. Progression rate from upper secondary to higher education

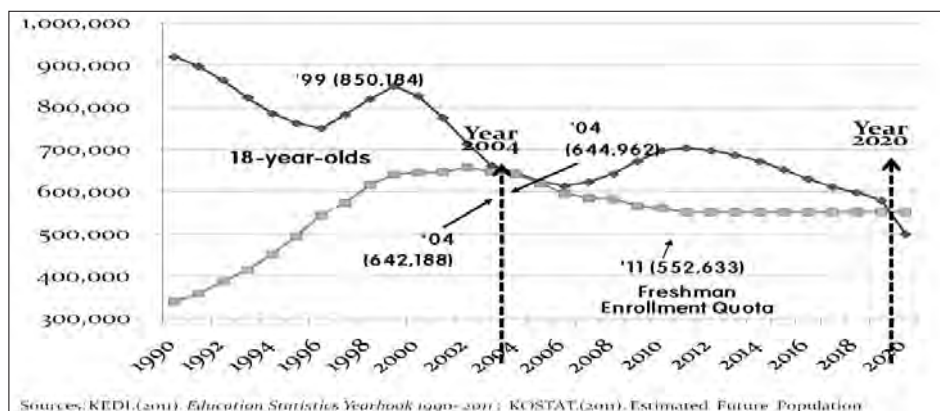


Source: MOEHRD/KEDI(2011), Analysis of Educational Statistics

Thirdly, there has been a change in the student population in recent years. The high growth of participation in higher education during the last two decades is remarkable. As seen in <Figure 2>, the progression rate from upper secondary to higher education dramatically increased from 33.2 per cent in 1990 to 83.8 per cent in 2008. But, as can be seen in <Figure 3>, the falling school-age population due to the low fertility rate has lowered the freshman enrollment quota since 2002. While the total number of 18 year olds declined from

850,184 in 1999 to 644,962 in 2004, the freshman quota in higher education decreased from 642,188 in 2004 to 552,633 in 2011. In 2020, it is estimated that the freshman quota of 2011 will exceed the total number of 18 year old.

Figure 3. Changes in school-age population and freshman enrollment quota



After the Asian economic crisis of 1997-8, the government acknowledged the rise of unemployment rate amongst university graduates. It was believed that the quantitative expansion of higher education in the previous decades led to a serious mismatch between the demand and the supply in the changing labor market. The increased job prospects of the graduates failed to meet the rapidly changing demand from industry.

Therefore, the government sought ways to ensure both the quality of higher education and the quality of human capital. Then considering the increasingly competitive international market, the government promoted lifelong learning and cross-border higher education, to meet the needs of a knowledge-based economy and the age of globalization. Firstly, the government promoted life-long learning for adults. Although the progression rate from secondary to tertiary education is more than 70%, there is still a low rate of adult participation in Korea. For example, as of 2010, 27.3% of the adult population aged 25 years and above have not completed upper secondary education (KOSTAT, 2010). In particular, a high rate of the older population is low in skills and could benefit from upgrade training. In this regard, higher education is required to play an important role in promoting lifelong learning in order to enhance national competitiveness in the context of 'globalization harnessed by information and communications technologies'. Secondly, the government promoted internationalization of higher education. Efforts were made to attract international students in particular as the government attempted to increase international cooperation in teaching and research.

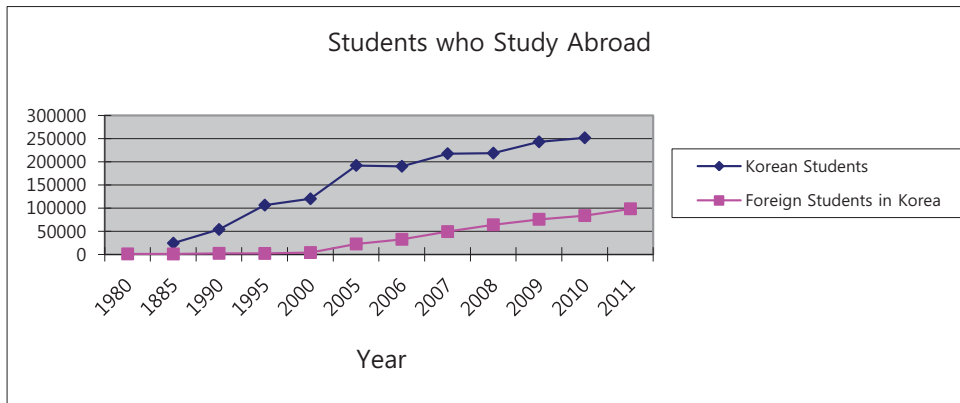
The government policy on internationalization of higher education will be discussed in detail in the next part.

## 2.2 INTERNATIONALIZATION OF HIGHER EDUCATION IN KOREA

Since the 1995 education reform, 'globalization' and 'international competitiveness' have been the driving forces behind the development of higher education policies. For example, the "Basic Plan for Opening Higher Education" in 1996 initiated several policies and legislation for the internationalization of higher education. Considering the imbalance between outbound and inbound students, the "Study Korea" plan was launched to attract foreign students in 2004. The announcement of the Vision for the Internationalization of Higher Education in 2007 became the first comprehensive plan encompassing 11 related Ministries. It helped the government to develop several programs such as the Global Scholarship Program, ICI-ECP Program (Korea-EU exchange program). The Global Scholarship Program started to implement the "Global Korea Study" plan, integrating the Korean scholarship program into the "Study Korea" plan with some new programs in 2010. On the other hand, the ICI-ECP Program benchmarked the US-EU student exchange program as the EU proposed to the Korean government to start a student exchange program for the development of economic and political relations between EU and Korea in 2007. The Program has been successful in increasing the number of projects and the Korean government is interested in expanding it.

The trends in the flow of students have important implications for higher education in terms of cross-border higher education. As shown in <Figure 4>, the number of Korean students studying abroad has increased rapidly since 1985. The "Study Korea" was successful and has recruited about 50,000 students from abroad by 2010. However, despite the steady growth of the number of foreign students studying in Korea, the gap between the outbound and inbound is still large.

Figure 4. Korean Students studying abroad and foreign students in Korea



Source: MOEHRD/KEDI(2011), Analysis of Educational Statistics

According to the destinations and the purposes of Korean students, shown in <Table 1>, most Korean students prefer to earn the doctoral degree abroad, particularly in the U.S., after completing their master's degree in Korea. Another new trend is that many students want to study English abroad in English speaking countries such as Australia, Canada and the UK. Therefore, most Korean graduate schools find it harder to recruit excellent doctoral students than before.



Table 1. Korean Students Studying Abroad (2011)

Region	Total	Degree Program	Language School
Asia	128,820	62,372	58,848
Africa	744	412	332
North America	89,169	75,825	13,344
Latin America	266	82	184
Europe	32,599	13,987	18,612
Middle East	289	174	115
Total	251,887	152,852	99,035

Source: MOEHRD/KEDI(2011), Analysis of Educational Statistics

Foreign students studying in Korea are described in <Table 2> by regions and types of programs. Recently, the government has been actively promoting internationalization of higher education, recognizing that it is a key challenge for Korean universities in the pursuit of international competitiveness. As a result, by 2011, there are 89,537 foreign students and 90% of them are from Asia.

Table 2. Foreign Students Studying in Korea (2011)

Region	Total	Undergraduate	Graduate	Language School	Others
Asia	80,766	42,783	16,774	16,366	4,843
Africa	1,063	229	609	195	30
Oceania	338	84	101	73	80
North America	3,769	1,010	894	790	1,075
Latin America	660	191	189	206	74
Europe	2,941	344	445	794	1,358
Total	89,537	44,641	19,012	18,424	7,460

Source: MOEHRD/KEDI(2011), Analysis of Educational Statistics

Thus the Korean government encourages universities to increase the competitive power in teaching and research, and to attract more international students.

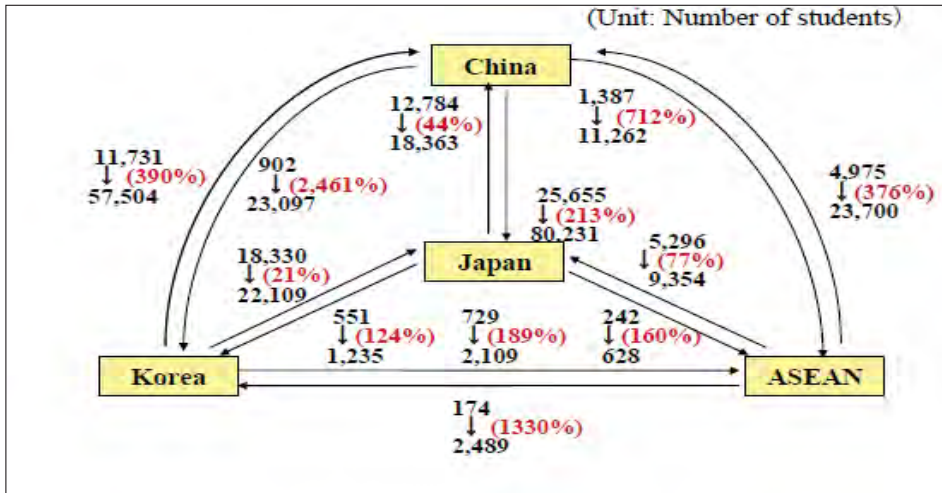
### 3. EMERGENCE OF CAMPUS ASIA PROGRAM

With the growth of the East Asian economy as the biggest market of the world economy, creation of an East Asian Community based on mutual understanding and cooperation has emerged as a key issue. However, there are historical conflicts and mixed national sentiments toward one another. Therefore, it is necessary to build trust in fields less sensitive to national interest and requiring cooperation from each other. In this regard, student exchange in university program has been recognized as a catalyst to promote mutual understanding and cooperation crossing the national border.

Therefore, as shown in <Figure 5>, the growing mobility in the Asian region, especially between the three countries of Korea, China and Japan during the given years was encouraging. Considering the initial aims of the CAMPUS Asia Program, it is expected that the program can enhance the increasing mobility in the region

and therefore contribute to building peace and prosperity for the future of an East Asian Community by promoting student exchange and mutual understanding between Korea, Japan and China, and then by extending it to other Asian countries.

Figure 5. Trends in international student flow of East Asian countries 1997 vs 2007



Source: Kazuo Kuroda et al.(2010), Cross-Border Higher Education for Regional Integration: Analysis of the JICA-RI Survey on Leading Universities in East Asia

### 3.1 PROGRESS IN THE DEVELOPMENT OF THE CAMPUS ASIA PROGRAM

#### 3.1.1 THE ORIGINS OF THE IDEA OF CAMPUS ASIA PROGRAM

The Korean Ministry of Education, Science and Technology (MEST) assumed a leading role in promoting university student exchange programs with Japan and China. As a part of the efforts, the MEST commissioned research on developing an Asian University Student Mobility Program to Korean Educational Developmental Institute (KEDI) (Choi, D. et al., 2009). The research benchmarked the European Erasmus Program as a model to demonstrate the importance of university student exchange in the process of building an East Asian Community. This is because the Erasmus program has been so successful in promoting the university student exchange program, keeping academic standards comparable throughout the region as mandated in the Bologna Process intended to create a European Higher Education Area (EHEA). The research highlighted the benefits of dual or joint degree programs in terms of internationalization and quality assurance of higher education in Korea and other partner countries, considering the increasing global job market in the East Asian region. The idea of "CAMPUS Asia" was influenced by the plan to create a European Higher Education Area given the fact that it would like to indicate the emerging Asian Higher Education Area (Choi, D. et al., 2009). In addition, the research proposed a framework of CAMPUS Asia and method to implement the program based on the experience of the Erasmus and Erasmus Mundus program.

Based on this research, the name of “CAMPUS-Asia Program” first appeared in March 2009 in a MEST document presented at the Presidential Commission on the National Brand. Soon after, the research paper titled “A study on CAMPUS Asia as an Asian University Student Exchange Program” was published in 2009. Therefore, it can be said that the CAMPUS Asia is modeled after the European Erasmus and Erasmus Mundus program.

However, compared to the Erasmus program, CAMPUS Asia program has two distinguished characteristics. Firstly, from the outset, it has emphasized the creation of dual or joint degree programs at the graduate level focusing on regional cooperation. A dual or joint degree program might be most comprehensive and demanding given the fact that the program can't be successful without trust-building between universities among Korea, China and Japan. It is the reason why this government initiative is required even though there have already been many student exchange programs at the university level among these three countries. By 2007, respectively 12 and 2 Korean universities had dual degree programs with Chinese universities and Japanese universities. However, there are no trilateral exchange programs between universities from these three countries. In this regard, the Korea-China-Japan CAMPUS Asia program seems to contribute to removing systemic obstacles to earning dual or joint degrees by credit transfer among these three countries. Secondly, the CAMPUS Asia program is mainly focusing on trilateral exchange and cooperation. Therefore, it can be distinguished from other student exchange programs focusing on bilateral exchange. It is based on a consortium composed of the universities from the three countries. For example, one typical way of managing an MA study could be that a Korean student can start the first semester in Korea, and study the second and third semesters in China and Japan respectively and finally complete the MA degree program at home, in Korea.

### *3.1.2 PROGRESS IN BUILDING CONSENSUS AND FRAMEWORK FOR CAMPUS ASIA*

Japan has played an important role in promoting student exchange and cooperation between the three countries. In August 2009, a director-general of the division of higher education, Japanese Ministry of Education, Culture, Sports, Science and Technology (MEXT) visited Korean MEST to discuss student exchange and cooperation between Korean and Japan universities. More importantly, Japanese Prime Minister Hatoyama proposed to establish an Expert Committee in order to conduct student exchange of high quality at the 2<sup>nd</sup> China-Japan-Korea Trilateral Summit Meeting held in Beijing in October 2009. China has also played a role in the process of building consensus and implementing the CAMPUS Asia. The leaders of these three countries adopted a joint statement stressing that they will conduct exchange programs among all sectors of the three countries, particularly youth and university student exchanges.

Based on the proposal of the 2<sup>nd</sup> Summit Meeting, the “China-Japan-Korea Committee for Promoting Exchange and Cooperation among Universities” was composed of eighteen experts from three countries, and held the first meeting in Japan in April 2010. At the first Committee meeting, the title of the exchange program was decided as “CAMPUS Asia” (Collective Action for Mobility Program of University Students), a name proposed by the Korean delegation. Two Working Groups were also organized under the Committee in order to implement the CAMPUS Asia program. One was responsible for the University Exchange Program, and the other for Quality Assurance. The Japanese delegations emphasized the Quality Assurance and have played a major role in

developing “Guidelines for exchange and cooperation among universities in Korea, China and Japan with quality assurance”. It was at the 3<sup>rd</sup> trilateral Summit Meeting held in Jeju Korea in May 2010 that the leaders of the three countries adopted the “Trilateral Cooperation VISION 2020”, and agreed to implement CAMPUS Asia as soon as possible, considering its extension to ASEAN countries. They also agreed to establish a Secretariat for the efficient promotion and management of trilateral exchange and cooperation in Korea. The Secretariat could provide an institutional platform to implement CAMPUS Asia. After the 3<sup>rd</sup> Summit, two Working Group meetings were followed to discuss the implementation of CAMPUS Asia and guidelines for Quality Assurance in Tokyo in August and in Beijing in December 2010.

At the 3<sup>rd</sup> Committee held in Jeju, in May 2011, Korea agreed to a set of principles for the implementation of the pilot program. These principles, confirmed at the 3<sup>rd</sup> Committee, will be explained in the next part. The Committee approved the “Guidelines for exchange and cooperation among universities in Korea, China and Japan with Quality Assurance”. The main purpose of the guidelines is “to establish an effective operational mechanism for university exchange and quality assurance, to protect students and other stakeholders as well as to urge relevant stakeholders to fulfill the responsibilities and promote collaboration, thereby contributing to comprehensive educational cooperation and a good-neighborly partnership of mutual trust oriented among people in these three countries”. The guidelines stress the role of stakeholders such as governments, universities, quality assurance agencies and industry in implementing quality assurance.

### 3.2 IMPLEMENTATION OF THE PILOT PROGRAM OF CAMPUS ASIA

In this part, the principles of the pilot program of CAMPUS Asia are explained in detail. At the pilot stage, the principles for the implementation of the pilot program are shown in <Figure 6>.

Figure 6. Principles for the implementation of the pilot program

Exchange Subjects	Undergraduates and Graduates of China, Japan, Korea Universities
Participating unit	A consortium by the universities of the 3 countries; application will be made at the level of departments or colleges, submitted through the participating universities; one university may participate in several consortia or multiple universities from one country may participate in one consortium
Style and field of exchange project	To be decided by each consortium autonomously
Period of projects	One year as the main form; no less than three months during the pilot stage (recommended)
Number of participating students	Each country will support 100 students per year (for one year exchange basis) to and from the other two countries on a basis of reciprocity

Duration of pilot program	3-5 years
Number of consortium	About 10
Selection process	1 <sup>st</sup> stage: Each country's autonomous evaluation 2 <sup>nd</sup> stage: Joint trilateral evaluation
Language	To be decided by each consortium autonomously
Support to university	To be decided by each government autonomously
Support to students	Students pay tuition to their universities, tuition fee will be mutually exempted; support for Airfare will be decided autonomously by the home country, while all other costs (e.g., housing) will be covered by the host countries

Based on the principles, a joint call for a pilot program application was announced, 58 consortia applied for it. The selection went through a two stage evaluation process. At first stage, each country selected 28 consortia out of the total number of applicants. At second stage, 10 consortia were selected by a joint trilateral evaluation in 2011.

The Pilot program was launched over the next 5 years (2011-2015). The list of 10 consortia is seen in <Figure 7>.

Figure 7. The list of 10 consortia for the CAMPUS Asia Pilot program

Korea	China	Japan	Project Theme
Korea U	Fudan U	Kobe U	Risk Management on East Asia
PNU	SJTU	Kyushu U	Energy & Environmental S & T
SNU	Peking U	Tokyo U	International & Public Policy Studies
SNU	Peking U	Hitotsubashi	Asia Business Leaders Program
KDI	Tsinghua	NGIPS	Policy Studies
KAIST	Tsinghua	TIT	Science & Technology
Dongseo U	Guangdong	Ritsumeikan	East Asian Humanities
SKK U	Jilin U	Okayama U	Achievement of Common Good & Reevaluation of Classical Culture in EA
SKK U SNU	Renmin U Tsinghua SJTU	Nagoya U	Law and Political Science
POSTECH SNU	Nanjing U SJTU	Nagoya U Tohoku U	Chemistry and Materials

As seen in <Figure 7>, these consortia are composed of universities from the three countries based on the principles. Universities can apply for more than one consortium. When more than one university in a same country applies for the same consortium, only one of them can submit the application.

#### 4. ANALYSIS OF KOREAN SURVEY RESULTS

In the previous chapter, the Korean experience in the creation of the CAMPUS Asia Program was described. As the Korean government recognizes the importance of the regional cooperation along with the growth of the Asian economy in an increasingly competitive international market, a survey was carried out to identify the challenges faced by universities during the implementation of the pilot program.

##### 4.1 PURPOSE AND METHOD OF THE SURVEY

This survey was conducted to identify the perspectives of Korean consortium universities in relation to the pilot program of CAMPUS Asia. The survey questionnaires were distributed to 12 university program managers of 10 consortia and responses from 9 university program managers of 8 consortia were returned by e-mail in May 2012. The questionnaire was structured and participants could choose more than one answer in order of importance. If they thought there was no answer suitable, they could write their own answers. For the analysis of the survey results, a frequency analysis method was used to the questions in case there was more than one answer in order of importance. However, as the cases were small, from the first to the third in order are classified and the rest are indicated as "other".

##### 4.2 ANALYSIS OF THE SURVEY RESULTS

To the first question, "what would be the most important reason for the university to take part in the consortium for the pilot program of CAMPUS Asia," many participants responded (N=4, 44.4%) that the internalization of the university is the most important reason, and about 33.3% (N=3) answered that providing more opportunity for students' overseas experiences was an important factor in taking part in the consortium (Table 1).

Table 3. The most important reason for the university to take part in the consortium

LIST	Responses				
	First (N,%)	Second (N,%)	Third (N,%)	Other (N,%)	NC (N,%)
Internationalization of the university	4(44.4)	2(22.2)	0	1(11.1)	2(22.2)
Additional Financial support from the government	0	0	2(22.2)	2(22.2)	5(55.6)
Academic advancement through increased opportunity for cooperation with other universities	0	0	2(22.2)	2(22.2)	5(55.6)
More opportunity for Students' overseas experiences	3(33.3)	3(33.3)	1(33.3)	0	2(22.2)

Raising international recognition of the university	0	1(11.1)	0	4(44.4)	4(44.4)
Request by partner university	1(11.1)	1(11.1)	0	2(22.2)	5(55.6)
Others	1(11.1)	0	0	0	9(88.9)

The second question wanted to identify the most difficult part in the selection process of the consortium for the pilot program of CAMPUS Asia. According to the responses, the formation of a university consortium, such as signing of the MOU treaty was the most difficult part in the selection process of the consortium (33.3%, table 4).

Table 4. The most difficult part in the selection process of the consortium

List	Responses				
	First (N,%)	Second (N,%)	Third (N,%)	Other (N,%)	NC (N,%)
Formation of a university consortium - signing of the MOU treaty	3(33.3)	1(11.1)	0	1(11.1)	4(44.4)
University infrastructure (i.e. dormitory)	1(11.1)	2(22.2)	0	0	6(66.7)
Support for international programs (Language and culture education, counseling for students)	1(11.1)	0	0	1(11.1)	7(77.8)
Support from departments (opening new class in English)	0	0	0	2(22.2)	7(77.8)
Support from departments (opening new class in English)	0	0	3(33.3)	0	6(66.7)
other	3(33.3)	0	0	0	6(66.7)
None	1(11.1)	0	0	0	8(88.9)

The third question was to measure the most difficult part in the pilot program of CAMPUS Asia. As a result, 5 out of 9 participants responded that the “creation and management of new joint/multi degree program” was the most difficult part and 2 participants selected ‘creation of cooperation systems of the university consortium’ as answer.

Table 5. The most difficult part in the pilot program

List	Responses				
	First (N,%)	Second (N,%)	Third (N,%)	Other (N,%)	NC (N,%)
Language barriers	2(22.2)	0	1(11.1)	1(11.1)	5(56.6)
Creation of cooperation systems of the university consortium	2(22.2)	1(11.1)	0	0	6(66.7)
Supports for academic participation	0	1(11.1)	3(33.3)	1(11.1)	4(44.4)
Creation and management of new joint/dual degree programs	5(55.6)	1(11.1)	0	1(11.1)	2(22.2)
Creation of supporting systems for students (Counseling office for study and living)	0	0	0	3(33.3)	6(66.7)

Management of the balance in the number of students among the three countries	1(11.1)	2(22.2)	1(11.1)	0	5(55.6)
Others	0	1(11.1)	0	1(11.1)	7(77.8)

To the question of “what would be the most important aspect for students to participate in CAMPUS Asia program”, the financial support for study and living abroad and quality control of the program were determined(see Table 6).

Table 6. The most important for students to participate in CAMPUS Asia program

List	Responses				
	First (N,%)	Second (N,%)	Third (N,%)	Other (N,%)	NC (N,%)
Financial support for study and living abroad	4(44.4)	2(22.2)	1(11.1)	0	2(22.2)
Basic education before participation (language and culture education)	1(11.1)	0	1(11.1)	0	7(77.8)
Availability of students' advice center for supports in studying and living during the participation	0	0	0	2(22.2)	7(77.8)
Quality control of the program	3(33.3)	1(11.1)	2(22.2)	1(11.1)	2(22.2)
Further opportunity for advanced study	0	2(22.2)	0	0	7(77.8)
Others ( )	2(22.2)	1(11.1)	0	0	6(66.7)

Question 5 was to identify the main benefits to the university from participation in CAMPUS Asia. Based on the responses, better understanding about the Asian community of students was considered as the most beneficial factor, and contribution to internationalization of the university as next.

Table 7. The main benefits to the university from the participation in CAMPUS Asia

List	Responses				
	First (N,%)	Second (N,%)	Third (N,%)	Other (N,%)	NC (N,%)
Contribution to internationalization of the university	3(33.3)	1(11.1)	1(11.1)	0	4(44.4)
Quality improvement in teaching/research of the university	0	2(22.2)	1(11.1)	1(11.1)	5(55.6)
Better understanding about the Asian community of students	4(44.4)	1(11.1)	0	0	4(44.4)
Enhancement of students' competency (improved employability of graduates)	2(22.2)	2(22.2)	0	0	5(55.6)
Others( )	0	0	0	0	9(100)



In order to determine the primary task for the participant university to support the successful development of CAMPUS Asia program, development of various joint/multi degree programs and monitoring and feedback for the improvement of the program were addressed(see table 8).

Table 8. The primary task for the participant university to support the successful development of CAMPUS Asia program

List	Responses				
	First (N,%)	Second (N,%)	Third (N,%)	Other (N,%)	NC (N,%)
Learning the language and culture of member countries	1(11.1)	1(11.1)	0	1(11.1)	6(66.7)
Development of various joint/dual degree programs	4(44.4)	1(11.1)	0	0	4(44.4)
Creation of students' advice centers	0	1(11.1)	0	3(33.3)	5(55.6)
Monitoring and feedback for the improvement of the program	3(33.3)	0	1(11.1)	2(22.2)	3(33.3)
Creation of a quality management system of the consortium	1(11.1)	2(22.2)	2(22.2)	0	4(44.4)
Others( )	0	0	1(11.1)	0	8(88.9)

Question 7: "what should be the main policy targets for the government to initiate successful promotion of CAMPUS Asia program" and the majority of them (N=6, 66.7%) considered securing financial support for development of the programs. Also, they determined the legal and systematic support for the management of joint/multi degree to be targeted.

Table 9. The main policy targets for the government to initiate successful promotion of CAMPUS Asian program

List	Responses				
	First (N,%)	Second (N,%)	Third (N,%)	Other (N,%)	NC (N,%)
Establishment of a committee for the management of the pilot programs	0	0	3(33.3)	0	6(66.7)
Secure financial support for further development of the programs	6(66.7)	2(22.2)	0	0	1(11.1)
Creation of a committee for the pilot program of CAMPUS Asia	0	1(11.1)	1(11.1)	1(11.1)	6(66.7)
Legal and systematic support for the management of joint /dual degree	4(44.4)	2(22.2)	0	0	3(33.3)

Establishment of a credit transfer and accumulation system	0	1(11.1)	0	1(11.1)	7(77.8)
Creation of students' networking for further relationships	0	0	0	2(22.2)	7(77.8)
Setting up database for sharing information and good cases	0	2(22.2)	0	0	7(77.8)
Others ( )	0	0	0	0	9(100)

To determine the main purpose for the success of the CAMPUS Asia program, questions were asked based on three categories: students, the university and the country. First for the students, the qualification for joint/multi degree from the participant universities (N=4, 44.4%), better understanding for language, culture, religion and social systems in Asia (N=2, 22.2%), and increasing mobility among student (N=2, 22.2%) were determined. Secondly for the university, the following purposes were addressed: the development of joint/multi degree programs and enhancement of competitiveness of Asian universities, for the success of the CAMPUS Asia. Lastly for the country category, the production of Asian elites was determined to be the main purpose for the success of the CAMPUS Asia Program, and the promotion of peace in the Asian region was next (see table 10).

Table 10. The main purpose for the success of the CAMPUS Asia Program

		Responses				
		First (N,%)	Second (N,%)	Third (N,%)	Other (N,%)	NC (N,%)
Students	Increasing mobility among students	2(22.2)	1(11.1)	1(11.1)	0	5(55.6)
	Better understanding for language, culture, religion and social systems in Asia	2(22.2)	3(33.3)	1(11.1)	0	3(33.3)
	Identity as a member of the Asian community	1(11.1)	1(11.1)	1(11.1)	0	6(66.7)
	Qualification for joint/dual degree from the participant universities	4(44.4)	0	2(22.2)	1(11.1)	2(22.2)
	Others( )	0	0	0	0	9(100)
University	Academics exchange of knowledge and information for education and research	1(11.1)	3(33.3)	0	0	5(55.6)
	Development of joint/dual degree programs	3(33.3)	2(22.2)	0	1(11.1)	3(33.3)
	Creation of research networks for Asian Studies	1(11.1)	0	1(11.1)	1(11.1)	6(66.7)
	Creation of quality assurance system for universities in Asia	0	1(11.1)	2(22.2)	0	6(66.7)
	Enhancement of competitiveness of Asian universities	3(33.3)	0	0	1(11.1)	5(55.6)

	Others( )	1(11.1)	0	0	0	8(88.9)
Country	Production of Asian elites	5(55.6)	0	1(11.1)	0	3(33.3)
	Cooperation in economic development in Asia	0	2(22.2)	1(11.1)	0	6(66.7)
	Promotion of peace in the Asian region	2(22.2)	1(11.1)	0	1(11.1)	5(55.6)
	Creation of Asian Higher Education Areas	1(11.1)	2(22.2)	0	1(11.1)	5(55.6)
	Others( )	1(11.1)	0	0	0	8(88.9)

To the question of “how can the CAMPUS Asia Program expand to other countries in Asia,” many participants responded that a gradual expansion to other countries was best after the completion of the main program of Korea, China and Japan (N=6, 66.7%). 2 out of 9 participants also suggested a gradual expansion to other countries during the main program of Korea, China and Japan.

Table 11. How can the CAMPUS Asia Program expand to other countries in Asia?

Responses	N(%)
Upon review after the completion of the pilot programs	1(11.1)
A gradual expansion to other countries during the main program of Korea, China and Japan	2(22.2)
A rapid expansion to other countries during the main program of Korea, China and Japan	0
A gradual expansion to other countries after the completion of the main program of Korea, China and Japan	6(66.7)
A rapid expansion to other countries after the completion of the main program of Korea, China and Japan	0
Others ( )	0
Total	9(100)

For the last survey question, “what should be the primary policy in the transition from the pilot to main CAMPUS Asia program of Korea, China and Japan,” the majority of participants pointed out that the expansion of the government budget for the programs in the 3 countries should be the next primary policy (table 12). 3 out of 9 participants considered the systematic support for the development and the management of joint/multi degree programs as the next.

Table 12. The primary policy in the transition from the pilot to main CAMPUS Asia program

List	Responses				
	First (N,%)	Second (N,%)	Third (N,%)	Other (N,%)	NC (N,%)
Expansion of the government budget for the programs in the 3 countries	6(66.7)	2(22.2)	0	0	1(11.1)

Establishment of an official center for the development and management of joint/dual degree programs	0	1(11.1)	1(11.1)	1(11.1)	6(66.7)
Systematic support for the development and the management of joint/dual degree programs	3(33.3)	3(33.3)	0	1(11.1)	2(22.2)
Creation of a credit accreditation system for the 3 countries	1(11.1)	2(22.2)	1(11.1)	0	5(55.6)
Creation of the quality assurance system for the 3 countries	0	0	2(22.2)	1(11.1)	6(66.7)
Others ( )	2(22.2)	1(11.1)	0	0	6(66.7)

Overall, the response from the Korean consortium of universities in the pilot program of CAMPUS Asia has been positive. It was pointed out that the creation of successful education programs will be challenging and will be in need of stable financial and systematic support from the three governments. However, it is believed that the possible benefits from the CAMPUS Asia program on the academic development will be overwhelmingly positive to the internationalization of higher education, and aid in securing peace and prosperity within the Asian region in particular. A similar survey for both Japanese and Chinese universities is desirable in identifying specific areas to improve for the success of the program.

## 5. CONCLUSION: THE IMPLICATIONS OF CAMPUS ASIA FOR UNIVERSITY COOPERATION IN ASIA AND KOREA-EU

This paper described the Korean experience in the creation of the CAMPUS Asia Program and identified the features of the Korea-China-Japan CAMPUS Asia program and the contribution to the internationalization of higher education in the region and the world.

From the outset, it emphasized the benefits of the development of dual or joint degree programs at the graduate level focusing on regional cooperation. The creation of dual or joint degree programs might be the most comprehensive and demanding task given the fact that the program can't be successful without trust or quality assurance from all three countries. However, the successful experience of the Korea-China-Japan CAMPUS Asia program could lead to the building of a common ground for the creation of Asian Higher Education Areas by lowering the existing systematic obstacles and building a supporting system such as credit transfer system and quality assurance system. The active cooperation in teaching and research in higher education institutions in the Asian region could support the further growth of the Asian economies and as a result contribute to the peace and prosperity of the region.

The cooperation of Asian universities could also be an opportunity for the enhancement of the overall quality of higher education in Asia. In addition, there would be many opportunities for Asian universities to contribute to the academic development by offering Asian perspectives and Asian experiences, which have been

ignored in the Western-led academia. The growth of Asian economies could also support the improvement of teaching and research centers in Asian universities and hence attract international students and academics.

Finally, the development of high quality educational programs based on the cooperation of Asian universities could create further academic opportunities beyond the Asian region. For example, the CAMPUS Asia program could initiate cross border academic activities with EU countries. The Korean government in particular is keen to develop academic network with other regions in order to generate economic growth and employment. In fact, the improved mobility of students and academics over the national border and over the different regions could bring cultural, academic and economic benefits to the world.

## References

- Artyom LUKIN(2011). Russia and the Emerging Institutional Order in the Asia-Pacific.
- Choi. S. et al.(2009). A study on CAMPUS Asia as an Asian University Student Exchange Program. KEDI CR 2009-071. (Commissioned by MEST) (Korean)
- Choi. S. et al.(2008). A study on Higher Education Cooperation in Asia-Pacific Region. KEDI CR 2008-47. (Commissioned by MEST) (Korean)
- Choi. S.(2003). Changing Skills Formation and Lifelong Learning in South Korea. University of London.
- Erasmus – Facts, Figures & Trends. The European Union support for student and staff exchanges and university cooperation (2011). Luxembourg: Publications Office of the European Union.
- External Evaluation of Erasmus Institutional and National Impact (2004). European Commission, Directorate-General for Education and Culture.
- Grubb, W.N. et al.(2006). Korea-Country Note: Thematic Review of Tertiary Education, Tertiary Review. Paris: OECD.
- Kazuo Kuroda et al.(2010). Cross-Border Higher Education for Regional Integration: Analysis of the JICA-RI Survey on Leading Universities in East Asia
- KEDI(2006). OECD Thematic Review of Tertiary Education: Country Background Report for Korea.
- Klimaszewska, K.(2010). "The *Erasmus Mundus* Programme – A Non-Typical Education Opportunity for Analysts." *Polish J. of Environ. Stud.* Vol. 20, No. 1.
- KOSTAT(2011). Estimated Future Population.
- MEST(2008). National Project towards Building World Class Universities 2008~2012. (Korean)
- MOE/KEDI(2011). Analysis of Educational Statistics. KEDI. (Korean)
- MOE/KEDI(2007). Analysis of Educational Statistics 2007. KEDI SM2007-10. (Korean)
- MOFAT(2010). Trilateral Cooperation VISION 2020.
- Park, N.K.(2006). Korea.In Forrest, J. & Altbach, P. (eds.) International Handbook of Higher Education. Dordrecht: Springer
- Sigalas, E. (2010). "The Role of Personal Benefits in Public Support for the EU: Learning from the Erasmus Students." *West European Politics*. Vol. 33, No. 6, 1341-1361.
- The EU contribution to the European Higher Education Area (2010). Luxembourg: Publications Office of the European Union.

European Commission (2008). The Impact of ERASMUS on European Higher Education: Quality, Openness and Internationalisation. Directorate-General for Education and Culture.

Guidelines for Exchange and Cooperation among Universities in China, Japan and Korea with Quality Assurance. MEXT(2011); available from World Wide Web@ [http://www.mext.go.jp/a\\_menu/koutou/shitu/1303468.htm](http://www.mext.go.jp/a_menu/koutou/shitu/1303468.htm)

"Higher Education in Europe" [30 April. 2012]. European Commission. Eurostat; available from World Wide Web@ [http://ec.europa.eu/education/lifelong-learning-policy/higher\\_en.htm](http://ec.europa.eu/education/lifelong-learning-policy/higher_en.htm)

"History of Erasmus Programme"; available from World Wide Web@ <http://erasmus.webhit.cz/scholarship/history-of-erasmus-programme/>

Strategic Framework for Education Training[29 March. 2012]. European Commission. Eurostat; available from World Wide Web@ [http://ec.europa.eu/education/lifelong-learning-policy/framework\\_en.htm](http://ec.europa.eu/education/lifelong-learning-policy/framework_en.htm)

"「第 1 回日中韓大学間交流・連携推進会議」により「CAMPUS Asia」スタート（概要）"[27 march. 2012]. MEXT(2010); available from World Wide Web@ [http://www.mext.go.jp/a\\_menu/koutou/shitu/1292771.htm](http://www.mext.go.jp/a_menu/koutou/shitu/1292771.htm)

"第 2 回日中韓大学間交流・連携推進会議（於北京）における合意内容について" [28 march. 2012]. MEXT(2010); available from World Wide Web@ [http://www.mext.go.jp/a\\_menu/koutou/shitu/1300081.htm](http://www.mext.go.jp/a_menu/koutou/shitu/1300081.htm)

"第 3 回日中韓大学間交流・連携推進会議（於済州）における合意内容について" [28 march. 2012]. MEXT(2011); available from World Wide Web@ [http://www.mext.go.jp/b\\_menu/houdou/23/05/1306081.htm](http://www.mext.go.jp/b_menu/houdou/23/05/1306081.htm)

"平成 23 年度大学の世界展開力強化事業の採択事業の決定について～日中韓「キャンパス・アジア」パイロット事業等が開始～"[28 march. 2012]. MEXT(2011); available from World Wide Web@ [http://www.mext.go.jp/a\\_menu/koutou/kaikaku/sekaitenkai/1312826.htm](http://www.mext.go.jp/a_menu/koutou/kaikaku/sekaitenkai/1312826.htm)  
<http://www.kosis.kr>





## KOREA'S DEVELOPMENT COOPERATION POLICY

### ASSESSING OPPORTUNITIES FOR EUROPEAN UNION COLLABORATION IN A NEW GLOBAL DEVELOPMENT COOPERATION ARCHITECTURE

AXEL MARX  
JADIR SOARES

#### 1. INTRODUCTION

The world of development cooperation is changing significantly. First, new players (donor countries) are manifesting themselves on the global scene. This does not only result in an increase of actors, but also in a diversification of models, each with their own objectives, for development cooperation (Walz and Ramachandran, 2010). Second, an increasing attention for the building of partnerships emerges with a specific focus on trilateral North-South-South cooperation (Busan Declaration, 2011). Considering these changes this paper aims to analyse the role of the Republic of Korea in this new development context, making a comparison of its strategies and performance with that of the European Union. This analysis can feed into an assessment of the opportunities for cooperation between these actors on pursuing poverty eradication and the promotion of other values and norms such as human rights and good governance.

The European Union's (EU) desire to "improve the tools of global governance" (European Commission, 2003) has led it to take a vested pursuit in becoming an active and leading actor in global economic development. The EU has had a role in development and development cooperation since the beginning of the European project. Over the years its role in development cooperation has steadily grown and its strategies have changed. Following the 2005 European Consensus on Development, EU development policy is required to improve the impact and effectiveness of global development assistance, progressing towards achieving the MDGs and the Paris and Accra Action Agenda targets. Article 21 (2)(d) of the Treaty on the European Union (TEU) lists as one of the objectives of EU external action to 'foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty.' The Treaty on the Functioning of the European Union (TFEU) stipulates that development cooperation is to be conducted in a framework of the principles and objectives of the EU's external action, which includes the promotion of democracy, the rule of law, and respect for human rights.<sup>1</sup> In the last decade human rights has gained greater prominence in the external action of the EC/EU (DG DEVCO, 2011, p. 69), and in recent years, the EU has made efforts to explicitly tie together development and human rights goals (Bartels, 2008, p. 128).. The European Commission's *Agenda for Change* recognizes that 'the objectives of development, democracy, human rights, good governance and security are intertwined'<sup>2</sup> and the EU acknowledges that 'sustainable development includes good governance, human rights and political, economic, social and environmental aspects.'<sup>3</sup> Most recently, efforts to enhance the status of human rights in the EU's external and development policy were reaffirmed through the adoption by the Council of the 'EU Strategic Framework and Action Plan on Human Rights and Democracy'.<sup>4</sup> This action plan stresses the application of a 'human rights-based approach' throughout the EU's development policy. The recent revision of

the EU's policy on providing budget support to third countries should also be highlighted, as the new approach places greater importance in 'good governance' and respect for the principles of human rights, democracy and the rule of law.<sup>5</sup>

In order to achieve its development objectives the EU develops partnerships. In an increasingly multi-polar and polycentric world the choice of partners increases. Partners, which in turn, are networked and linked to other partners. The Republic of Korea has emerged as an especially interesting partner to further develop partnerships in the context of development co-operation. The Republic of Korea is not only an exceptional example of sustained economic development (Evans, 1995; Amsden, 2002) which in a few decades moved from being a recipient country in the context of development cooperation to a donor country. The Republic of Korea has also taken a leading internal role in pursuing actively the advancement of the '(global) development agenda'. At its 2010 Seoul summit, the G-20, then led by the Republic of Korea, agreed to the so-called "Seoul Consensus" on development policy which aims to replace the Washington Consensus. The 'Seoul Development Consensus for Shared Growth' is a set of principles and guidelines aimed to improve economic development and the achievement of the MDGs in the less developed countries. The core principles focus *inter alia* on economic growth, global development partnerships, private sector development and participation, complementarity of policies and tangible outcomes to address significant development problems. In 2011 the Republic of Korea hosted the 4<sup>th</sup> High Level Forum on Aid Effectiveness in Busan which resulted in the Busan Partnership for Effective Development Co-operation.

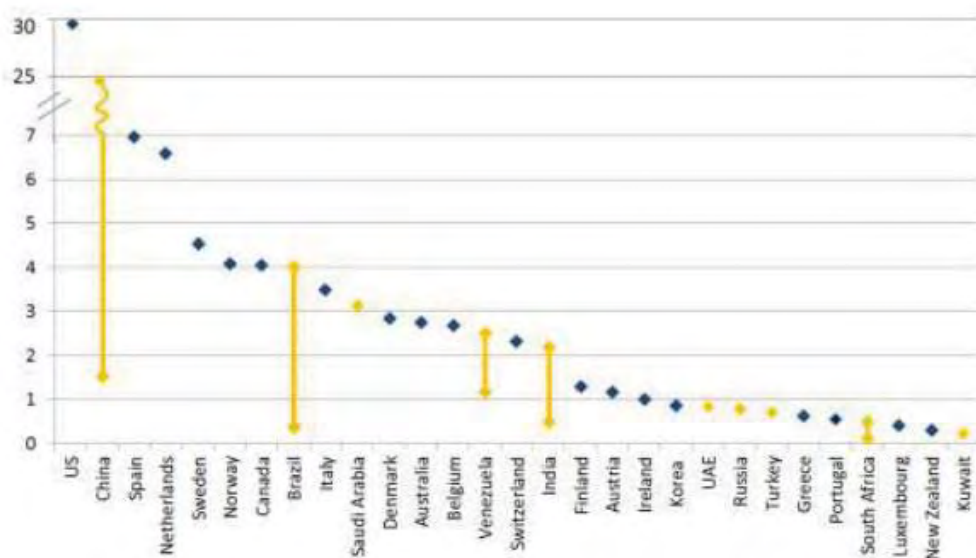
The ambitions of the EU and the Republic of Korea seem to align in the context of development cooperation. At the sixth EU-Korea summit in Seoul on 28 March 2012, the two parties agreed to conduct regular policy dialogue and exchange information on their respective development programmes, and also 'coordinate their engagement in-country to increase their impact on poverty eradication' (Joint Press Statement, 2012).

In light of increasing exchanges between the EU and Korea, this paper will analyze Korean development cooperation policy in order to gain a better understanding on how it relates to, and potentially differs from, EU development cooperation<sup>6</sup>. In the following sections, the paper first presents the context of the recent changes in the development assistance architecture caused by the entrance of new emerging donors (section 2), and the rapid development experienced by South Korea over the last half century, moving from a poor recipient to a emerging DAC donor (section 3). Next, section 4 presents the Korean objectives on development cooperation and discusses the Korean approaches to perform its assistance through different channels and types, comparing it with the European Union. Further, the paper analyses the recipients of South Korean aid, both in terms of partners and sectors and discusses possibilities for further cooperation. Section 5 makes an assessment of the participation of South Korea and the EU in South-South and Triangular cooperation. Section 6 presents some tentative conclusions.

## 2. A NEW DEVELOPMENT COOPERATION ARCHITECTURE

The development cooperation arena traditionally deals with developed countries or multilateral agencies (donors) assisting developing countries (recipients) on pursuing development, especially through achieving the Millennium Development Goals (MDG). Parallel to this traditional development cooperation approach, several newly emerging countries have performed assistance to other developing countries for decades (Cabral et al., 2010; Denney et al., 2011; ECOSOC, 2008; Mawdsley, 2012; Woods, 2008). Example of these emerging donors are the Republic of Korea, China, the United Arab Emirates, Saudi Arabia, Venezuela, India, Kuwait, Brazil, among others (Kharas, 2007). Graph 1 shows spending for Official Development Assistance (ODA) per country in billion USD and the role of new countries in development cooperation. For some emerging countries data varies and lines indicate the difference between the lowest and the highest estimations. The emergence of new donors on the world stage has not only resulted in an increase of new actors but also in a diversification with regard to development cooperation strategies. Walz and Ramachandran (2010) identify three distinct models of development cooperation and aid delivery (the DAC model, to which the EU and Korea belong, the Arab model and the Southern model) which are not necessarily converging. These models differ on the modalities of giving aid and the sectors on which they are mostly focused.

**Graph 1: ODA per country in billion USD.**



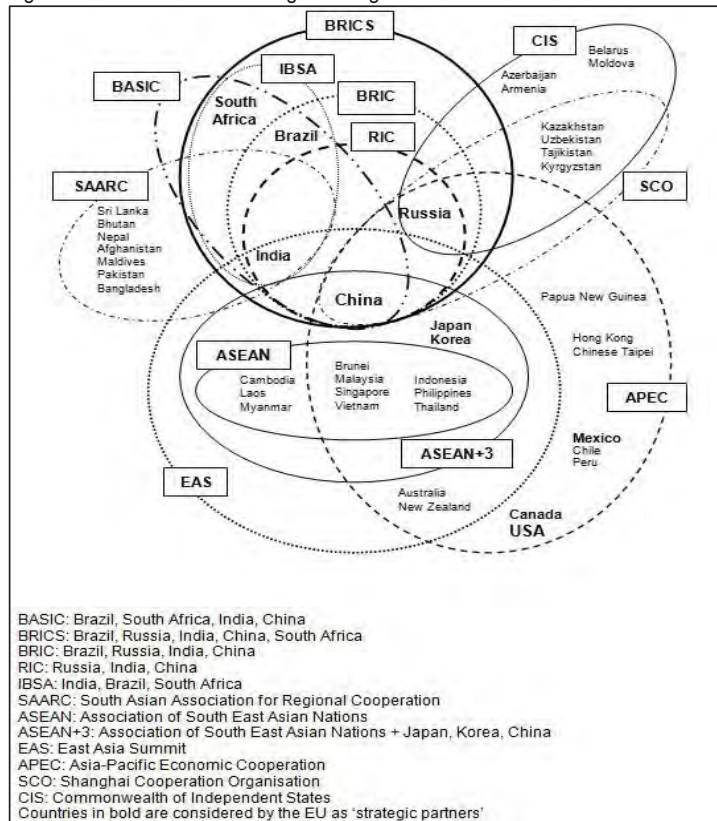
Source: Walz and Ramachandran (2010).

During several years, the amount of aid performed by these newly developing countries was modest. However, the volume of their activities have increased significantly over the past few years, representing up to 9.8% of the

total flows in 2006 (ECOSOC, 2008, pp. 10). This volume of flows makes these countries important players in development assistance scenario, and consequently, it increases their voices in the political arena.

This participation of these new donors brings new challenges, but also new opportunities. Some traditional countries argue that emerging donors are lowering standards and increasing debt burdens in the countries they are offering aid (Woods, 2008). However, in a balanced assessment, Ngaire Woods concluded that the emerging countries are not trying to re-establish new rules for development assistance. But, by offering alternatives to developing countries, emerging donors are introducing competitive pressures into the existing system, weakening the bargaining power of the traditional donors on imposing their standards. New donors also offer new opportunities, especially in a context which emphasizes the building of partnerships and networks as is highlighted in the Seoul Consensus and the Busan Declaration. This form of network governance opens up new opportunities for policy-makers to achieve their policy objectives (Slaughter, 2004; Slaughter and Zaring, 2006; Marx et al., 2011). Especially relevant in the context of development cooperation are the opportunities which are offered through partnerships to develop triangular development cooperation which consists of a traditional donor, a 'new' donor and a recipient country. In this new networked global order (Slaughter, 2004; Keukeleire and Bruyninckx, 2011) many opportunities emerge to develop triangular cooperation since the new donors are important network hubs and links to other countries and regional organizations (see figure 1).

Figure 2: A Network of New Regional Organizations



Source: Keukeleire & Bruyninckx, 2011

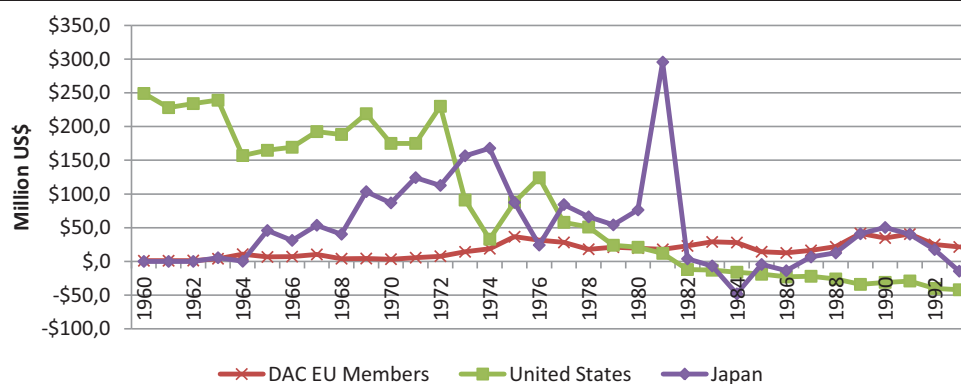
In this new development cooperation architecture, EU and Korea play distinct roles. While EU represents one of the most powerful traditional donors, who have intensively influenced the OECD-DAC norms and standards, Korea was first a recipient country for decades and recently became a new DAC member. In this scenario, Korea could have a special role on acting as a bridge between the traditional and the new emerging donors, helping to straighten the dialog among these actors, and better understand their values and objectives on performing assistance.

### 3. THE RISE OF KOREA IN DEVELOPMENT COOPERATION: FROM RECIPIENT TO DONOR

Korean development in recent decades has been impressive (Evans, 1995, Amsden, 2002). The country was devastated after the Korean War (1950-1953) but, after a successful economic transformation, in half a century the country became an OECD member, figuring among the most developed nations around the world.

The recent Korean economic development, in part is due to a well managed development aid that the country received. According to the Korean government estimates, the country received US\$ 12.7 billion between 1945 and late 1990s, “which helped spur economic development and decrease poverty” (OECD, 2008, p. 9). According to the Korean Deputy Minister of Foreign Affairs, Mr. Oh Joon, on his speech when Korea became member of the OECD’s Development Assistance Committee (DAC) on November 2009: “Half a century ago Korea was one of the poorest nations in the world, endeavouring to emerge from the ashes of the Korean War to rebuild itself”... “we worked hard to overcome poverty and achieve development”. This aid was mainly supported by the United States, Japan, and European Union DAC Members as illustrated in graph 2.

**Graph 2: Net ODA flows to South Korea by donor**



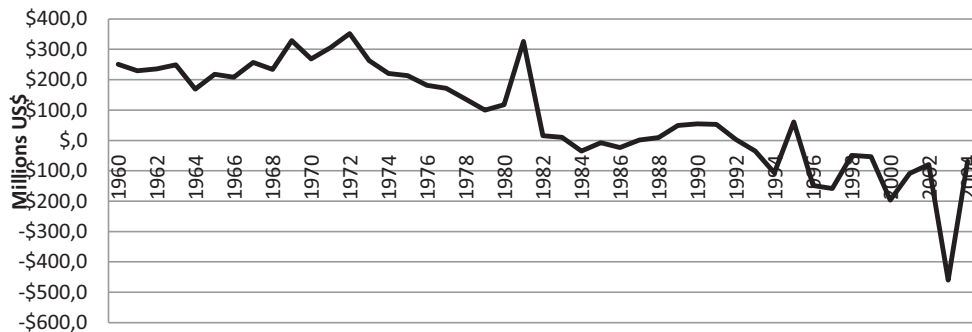
Source: OECD, 2012

During the period Korea was a recipient country of aid, the Korean government had a strong commitment to use foreign aid effectively, and successfully managed to use this financial assistance to overcome various national challenges through state-led projects aimed to spur economic development. (Jiyoung Kim, 2011; Evans, 1995).

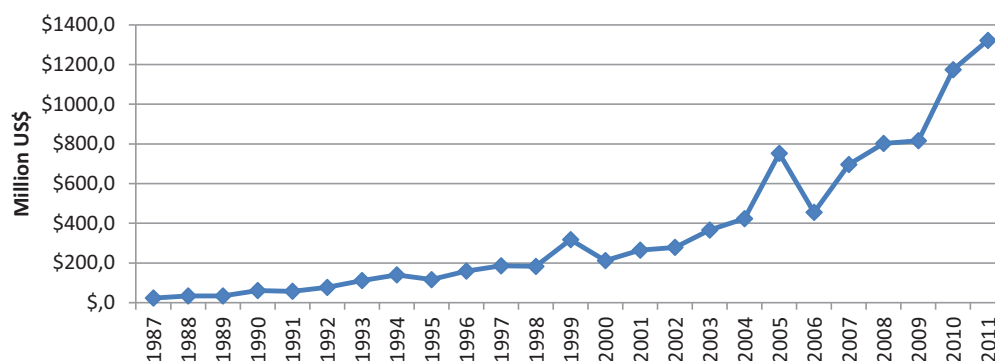
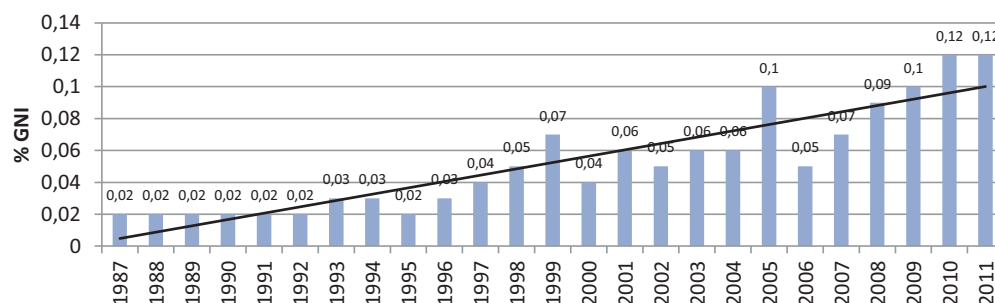
Following decades of sustained economic growth the Republic of Korea became a member of OECD in 1996 and, one decade later, the country began its application to become a member of OECD DAC, which succeeded at the end of 2009. However, Korea's Assistance started earlier, with the provision of technical cooperation in the late 1970s, during which Korea transferred its own development experience to developing countries (Chun et al, 2010, pp. 790). It was in the late 1990s that Korea made a more concrete effort to broaden and increase its assistance programs, which resulted in the creation of the Korea Eximbank's Economic Development and Co-operation Fund (EDCF) in 1987, and the Korea International Co-operation Agency (KOICA) in 1991 (OECD, 2008).

This rapid movement from being a recipient to a DAC donor country is illustrated in graphs 3 and 4. Graph 3 plots Korean net official development assistance (ODA) flows, i.e., the difference of donors' gross disbursements of grants and loans minus Korean repayments of principal on earlier loans, from 1960 to 2004. From the beginning of the 1990s the net ODA flows to Korea became negative, indicating that the Korean repayments to previous loans surpluses the assistance influx. Graph 4 shows the net disbursements from Korea (as a donor) to developing countries from 1987 to 2011. Note that it started modest but it is growing fast, mainly from the second half of the 2000s. In 2011, Korea net flows reached US\$ 1.321,32 million (0,12% of Korean GNI).

**Graph 3: Total Net ODA flows to South Korea**



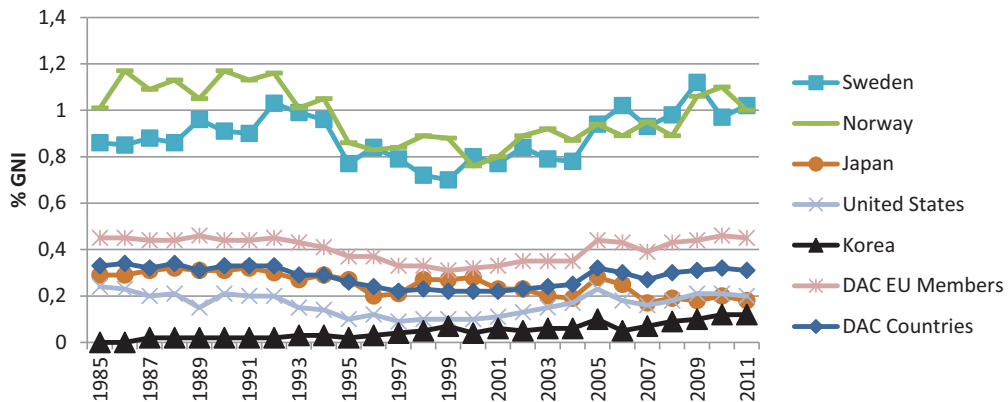
Source: OECD, 2012

**Graph 4: Korean ODA (Net Disbursements)****Korean ODA (% GNI)**

Source: OECD

Even knowing that South Korean aid (% of GNI) is still modest when compared with top donor countries such as Sweden and Norway, and also when compared with the average of European Union DAC members (see graph 5), the Korean rate of 0,12% of GNI should not be underestimated. When, in 2006, the government announced an ODA/GNI target of 0,118% by 2010 in its "Vision 2030" (The Reality of Aid, 2008), it was considered a huge challenge by its DAC peers (OECD, 2008). Although Korean rates are low when compared with top donors (that reached more than 1% of its GNI), Korean ODA is increasing fast (see graph 4) and it is almost reaching other DAC traditional members such as Japan (0,18% in 2011) and US (0,20% in 2011).

**Graph 5: ODA as % of GNI - by Donor**



Source: OECD

Another interesting issue to be considered is the South Korea assistance to the northern part of the peninsula, estimated to be US\$ 558 million in 2007 (OECD, 2008). This assistance cannot be reported as ODA to the DAC, since South Korea constitution still recognizes the whole Korean peninsula as part of its territory (Chun et al, 2010, pp.797). Consequently, it cannot be considered “foreign” aid. If we compute the assistance to North Korea, the South Korea ODA/GNI ratio in 2007 would increase from 0,07 to 0,13%.

#### 4. DEVELOPMENT STRATEGIES AND PRACTICES IN A COMPARATIVE PERSPECTIVE

##### 4.1. OBJECTIVES OF DEVELOPMENT ASSISTANCE

The aim of the Korean Government on development assistance is to reduce poverty and promote sustainable development. In the words of President Lee, the country is “wholehearted committed to pay back its ‘debts’ to the world as an international donor” (Soyeun Kim, 2011, pp. 812).

The Korean’ assistance structure is composed of mainly two actors. The Ministry of Foreign Affairs and Trade (MOFAT), responsible for grant aid policy, which is implemented by the Korea International Co-operation Agency (KOICA). Complementing, concessional loan policy is under responsibility of The Ministry of Strategy and Finance, and implemented by the Korea Eximbank’s Economic Development and Co-operation Fund (EDCF). Additionally, a further 30 other ministries, agencies and municipalities are involved in providing small amounts of grant aid, mainly in the form of technical co-operation (OECD, 2008).

The intentions of the Korean development assistance program on helping developing countries to pursue their development can also be illustrated by statements from the Ministry of Foreign Affairs and Trade (MOFAT): “Korea is fully committed to supporting the global efforts to alleviate poverty, promote sustainable growth, address global challenges, and achieve the internationally agreed development goals, including the Millennium Development Goals (MDG)<sup>8</sup>”.

The European Union objectives on development assistance align to a large degree to these of the Republic of Korea but also include other objectives. The promotion of inclusive and sustainable growth for human development and poverty eradication are the primary objective of the EU development policy (European



Commission, 2011). As stated in the *EU Agenda for Change* (European Commission, 2011), the EU also places emphasis on support of human rights, democracy and other elements of good governance in its development cooperation. The recently adopted framework for human rights specifies that 'Sustainable peace, development and prosperity are possible only when grounded upon respect for human rights, democracy and the rule of law.'<sup>9</sup> These elements of good governance are considered increasingly important, both as preconditions for sustainable and equitable development, for providing effective development assistance, as well as an objective in its own right (Hackenesch, 2011, pp.8). Accordingly, the EU approach on providing budget support to third countries explicitly requires 'good governance' and respect for the principles of human rights, democracy and the rule of law as a pre-condition.<sup>10</sup> In other words, the distribution of ODA of the EU institutions is increasingly determined by these conditionalities based on EU core values and human rights principles. This contrasts sharply with South Korean development policy.<sup>11</sup>

The following sections compare South Korean and European Union development cooperation. Several EU Member States are traditional DAC donors and have long-term experiences to share with South Korea. Apart from each Member State, the EU alone was the third largest DAC member in 2010 (OECD, 2012) and is one of the most important international actors on development cooperation and sustainable development in the current international debate. Although Korea and EU have a different backgrounds on development assistance, their policies on development cooperation share several principles, with the primary focus on poverty eradication and the achievement of the Millennium Development Goals. The main difference is the EU focus on promoting European values such as respect to human rights, freedom, peace, democracy, gender equality, among others (European Commission, 2006).

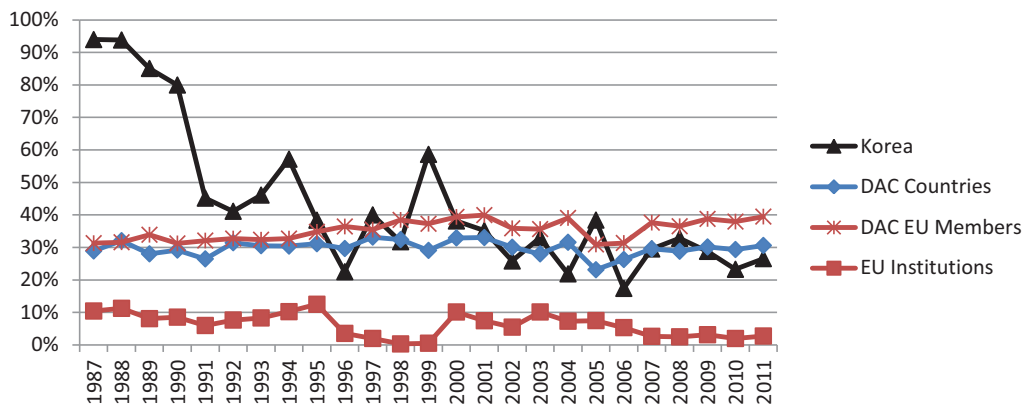
Besides comparing South Korean and EU development cooperation the following sections will also highlight some criticisms which have been raised in the literature concerning South Korean Assistance program. Many of these criticisms, aligning development cooperation objectives with strategic political and economic objectives, mirror criticisms which have been voiced towards other countries including many OECD-DAC. First of all, some authors have criticized Korea's performance on development assistance, much in line with a general criticism on the development cooperation policies of emerging donors, for being selective. Chun et al (2010) note that the Korean commitment to poverty alleviation and the MDG's are probably not the only objectives of development cooperation policy, since a high amount of Korea's ODA goes to relatively wealthier Asian countries with which Korea has strategic economic interests (Sri Lanka and Indonesia, for example), instead of least developed countries. Another critical issue found in the literature is over the high volume of ODA flow to Iraq and Afghanistan (Chun et al (2010); Soyeun Kim (2011)). Some authors link this with the objective of supporting the Korean strategic alliance with the US, instead of solely being focused on development and poverty eradication. Finally, lack of transparency is also an issue that is raised in the context of South Korean policy assistance. The country was ranked at 30 among 31 countries and multilateral agencies by Ghosh and Kharas 2011 Transparency Index in Foreign Aid<sup>12</sup>. Some of the critics will be discussed along this paper when presenting data on Korea ODA.

#### 4.2. APPROACH TO DEVELOPMENT COOPERATION

This section discusses the different approaches towards performing development cooperation and compares them with the EU and DAC countries. The following three questions are addressed: is development cooperation pursued via multilateral or bilateral channels? is the assistance made via grants or loans? is aid tied or untied?

First, concerning the use of multilateral channels to implement development cooperation, some authors (Soyeun Kim, 2011; Kharas and Rogerson, 2012; Keohane, et al, 2009) argue that this kind of channel has some specific benefits. Multilateral channels contribute to a better coordination of resources, and can improve efficiency on spreading the aid burden and leverages experience, expertise, geographic reach, and other assets that can be better deployed through joint efforts (OECD, 2011). This channel can also be considered more neutral (Soyeun Kim, 2011, pp. 804), since it limits the influence of domestic interests on using assistance for political or commercial ends (Keohane et al, 2009). The multilateral aid share of Korea and European Union Institutions are presented on graph 6, together with DAC members averages.

**Graph 6: Multilateral Aid Share**



Source: OECD

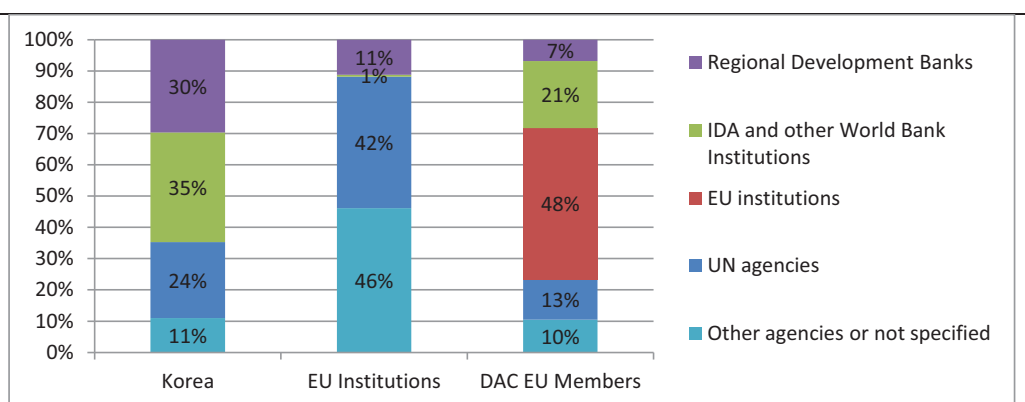
Graph 6 shows that Korea channeled its development cooperation mainly through the use of multilateral organizations until the mid 1990s. In this period, South Korea assistance was mainly through World Bank and Regional Development Banks. For example, in 1990, 61% of the Korean multilateral assistance was addressed to World Bank and 29% was addressed to Regional Development Banks. However, from the mid 1990s Korea changed its profile, and has increased its aid mainly through bilateral agreements. In the last decade, Korean multilateral share has been below the average of DAC members (around 30%), but the IDA and other World Bank Institutions (with 35%) are still the top destination of Korean multilateral aid, followed by the Regional Development Banks, with 30% (see graph 7).

One possible explanation for the decline in aid channeled through multilateral organisations by Korea is that multilateral approaches can be difficult to implement due to problems in acquiring political or public support at home (Chun et al, 2010, p.798), since, as stated by Milner and Tingley (2010), the donor country (principal) loses control over the funds in favor of a multilateral actor (agent)<sup>13</sup>. However, the Korean government is aware of the

necessity to increase their multilateral share. For example, among the development goals of EDCF, there is one specific goal to “Promote global partnership with development institutions such as Multilateral Development Banks (MDBs)” (EDCF, 2010). Also note that a decrease in the percentage of aid channeled through multilateral organizations can also be partially explained by the increase of the aid assistance volume in total if the additional volume of aid is exclusively allocated for bilateral use.

With regards to the European Union, the multilateral share of its assistance is low, which is not surprising since the EU itself is a supra-national organization which receives significant funds from its member states. However, if we look at graph 6 we can see that the DAC EU members perform a high percentage of their aid via multilateral channels, representing around 30 to 40% of their total development assistance. If we look at graph 7, it is evident that the top destination of the DAC EU members multilateral assistance are the EU (48%). With regards to the destination of the EU multilateral aid, the top destination in 2011 was The United Nations Agencies, with 42% of the total multilateral share, followed by Regional Development Banks, with 11%. Other 46% of the EU multilateral aid goes to other smaller agencies or are not specified in the DAC dataset. Given the high percentage of aid of the DAC EU members going to the EU one should be careful with comparing the percentages to Korea and the EU.

**Graph 7: 2011 Percentage of Multilateral Flows by Destination**

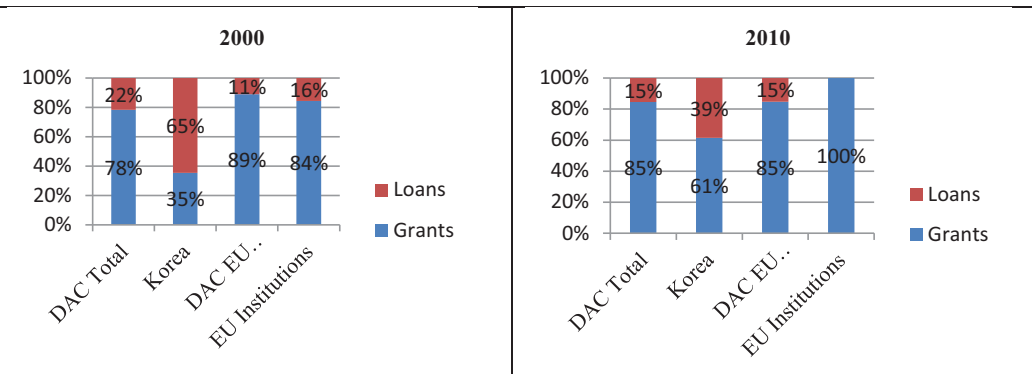


Source: OECD

Secondly, we compare the use of loans versus grants. Grants are transfers in goods, services or cash for which no repayment is required. These are increasingly preferred in a context of highly indebted developing countries. Korean aid is still characterised by a large use of concessional loans. As one can see in graph 8, loans represented 65% of the total Korean aid in 2000, against 22% on average for all DAC members and 11% on average for the European Union donors. Although loans are a valid aid mechanism and Korea had a successful experience receiving this kind of aid in the past (Kim, 2011, pp. 809), it has been kept under concerns due to international efforts to ensure debt sustainability, mainly in the case of least developed countries (LDC). Korea is aware of this issue and has changed this profile. Ten years later, the loan share has decreased, but still

represents 39% of the Korean aid, a high proportion when compared with DAC EU members (15%), or if compared with the EU, that in 2010 performed 100% of its aid through grants.

**Graph 8: Grants x Loans**



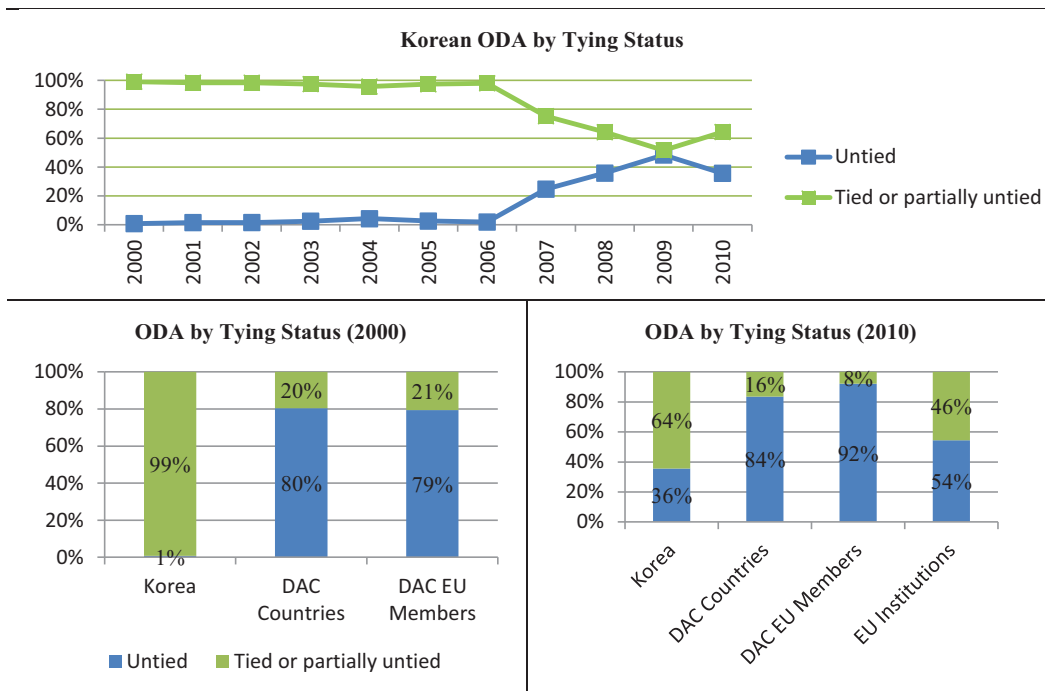
Source: OECD

Finally, the issue of tied versus untied aid is discussed and compared. Tied aid, i.e., aid that must be spent in the providing country, should be reduced, since it raises the cost of goods and services by 15-30% on average (OECD, 2008, pp. 23). In other words, tied aid is aid that must be spent in the country providing the aid (the donor country) or in a group of designated countries. A donor country will only provide a loan or a grant to a recipient country if this recipient country spends the money on goods and services produced in the donor country or a group of countries that is identified by the donor country. In contrast, untied aid has no geographical limitations or conditionalities.

Some European countries, such as Luxembourg, Norway and Sweden, have already fully untied their bilateral aid programs, but the average of DAC members is still 16% in 2010 (see graph 9). Until 2006, almost all Korean bilateral aid was tied (98% in 2006). This high proportion of tied aid in the Korean program has been criticized because it reduces the aid value and effectiveness but also due to the likelihood of neglecting the ownership of recipient countries and inadvertently promoting donor' export interests (Chun et al, 2010).

However, recently efforts have been made to reduce tied aid to the least developed countries, following DAC recommendations (OECD, 2008, p. 24). The Korean government created a roadmap to untie 75% of its overall ODA by 2015. In 2010, only 36% of Korean aid was untied. This figure is still low when compared with the 2015 goal, but the progress is clear if we consider the performance until 2006.

With regards to the European Union Institutions, 54% of the bilateral aid was untied in 2010. However, as data from previous years are not available, we cannot analyze its trend. Anyway, 46% of EU aid is still tied or partially tied, what indicates that EU also has improvements to enforce with regards to aid channels. The nature of this tied aid needs to be further investigated.

**Graph 9: Tying Status of Bilateral Aid**

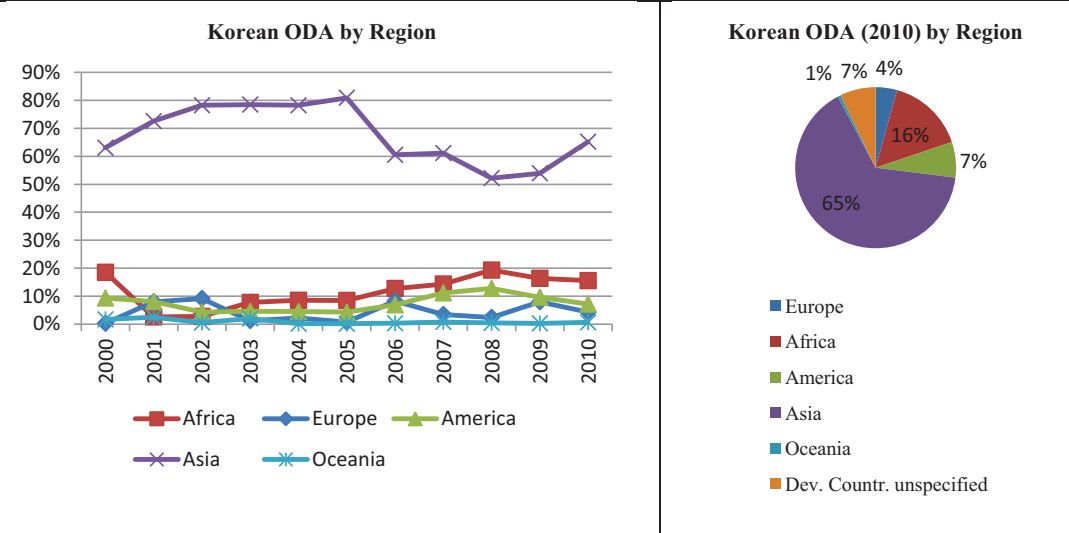
Source: OECD

**4.3. RECIPIENT COUNTRIES OF AID**

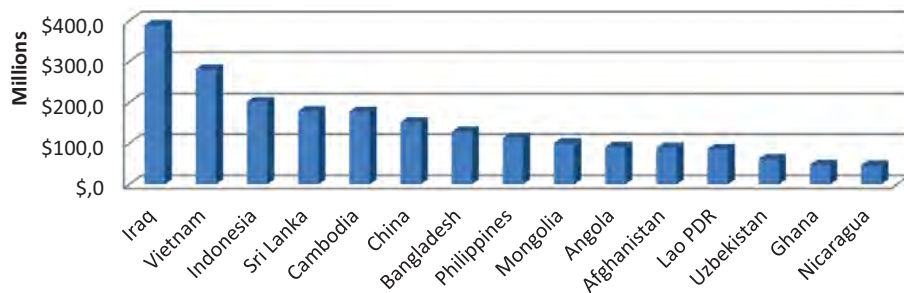
As illustrated in graph 10, Korea has a clear focus on aid to Asia, especially on Iraq, Vietnam, Indonesia and Sri Lanka. For example, in 2005 81% of the whole Korean aid was addressed to Asia. Although this focus is understandable from its own geographical location, some authors have criticized this focus, mainly because it does not seem to be aligned with poverty alleviation purposes and seem to focus more on commercial interests. Vietnam, Indonesia and Sri Lanka are economically fast growing countries and are not among the most needed ones (Chun et al, 2010). The high amount of aid to Iraq and Afghanistan has been criticized due to its security purpose, i.e., its main purpose seems to be the maintenance of the Korean strategic partnership on security with the United States (Chun et al, 2010; Soyeun Kim, 2011).

However, in recent years The Republic of Korea has started to balance its aid destination to other parts of the world, mainly to Africa. In 2010, the Asian share was reduced to 65%, while aid to Africa increased to 16%, followed by the Americas with 7%. The Korean presence in Africa seems to continue the upper trend, since recent news pointed to the increased presence of Korea in Uganda, and in Africa as a whole (Devex, 2012) .

**Graph 10: Korean ODA by region and countries**

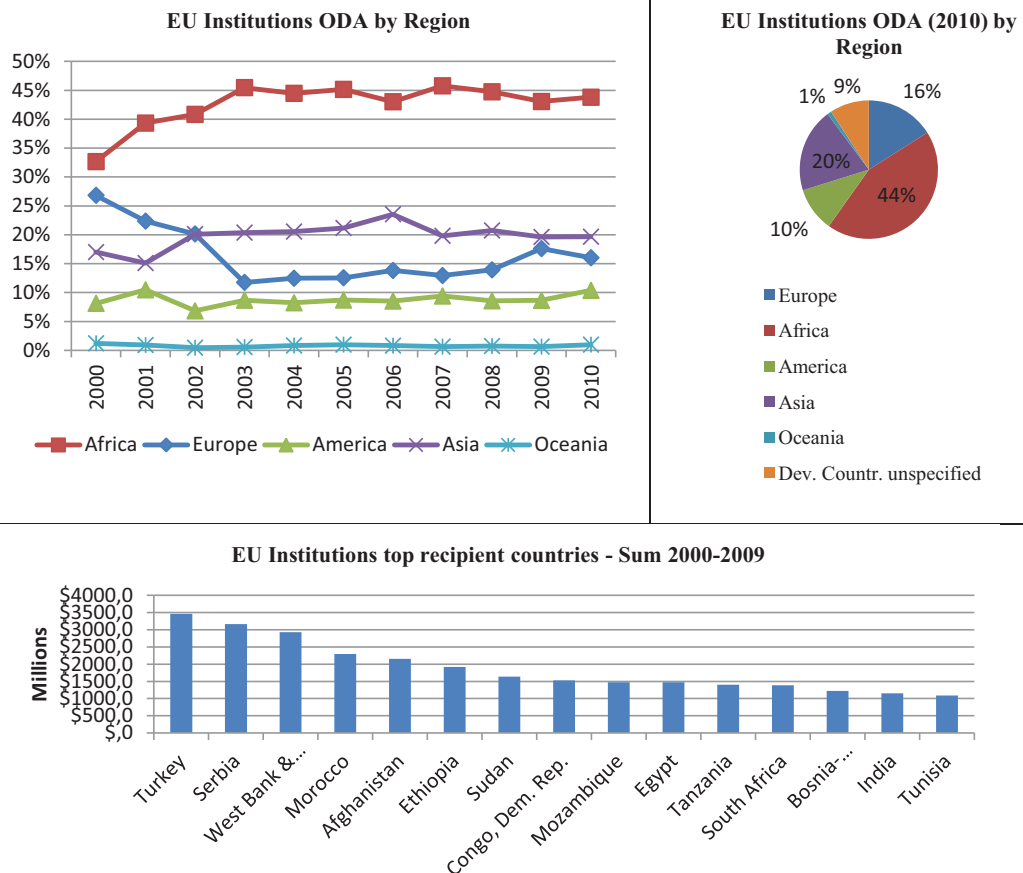


**Top recipient countries - Sum 2000-2009**



Source: OECD and World Bank Development Indicators

The recipients of European aid are more balanced across countries and regions. Graph 11 presents EU ODA by destination from 2000 to 2010. In this case one can observe a clear focus on Africa, followed by Asia and Europe. The distribution of EU aid among regions has been kept consistent during the last decade, without large variations over time and regions. In 2010, 44% of the EU aid was sent to Africa, 20% to Asia, 16% was sent to other European recipient countries such as Kosovo, Serbia and Moldova, and 10% to the Americas. The pie chart shows that, EU aid is more distributed than the Korean one, which is mainly focused on Asia. Also, if we look at the top recipient countries over the last decade, the European distribution is spread more evenly across the world.

**Graph 11: European Union Institutions - ODA by region and countries**

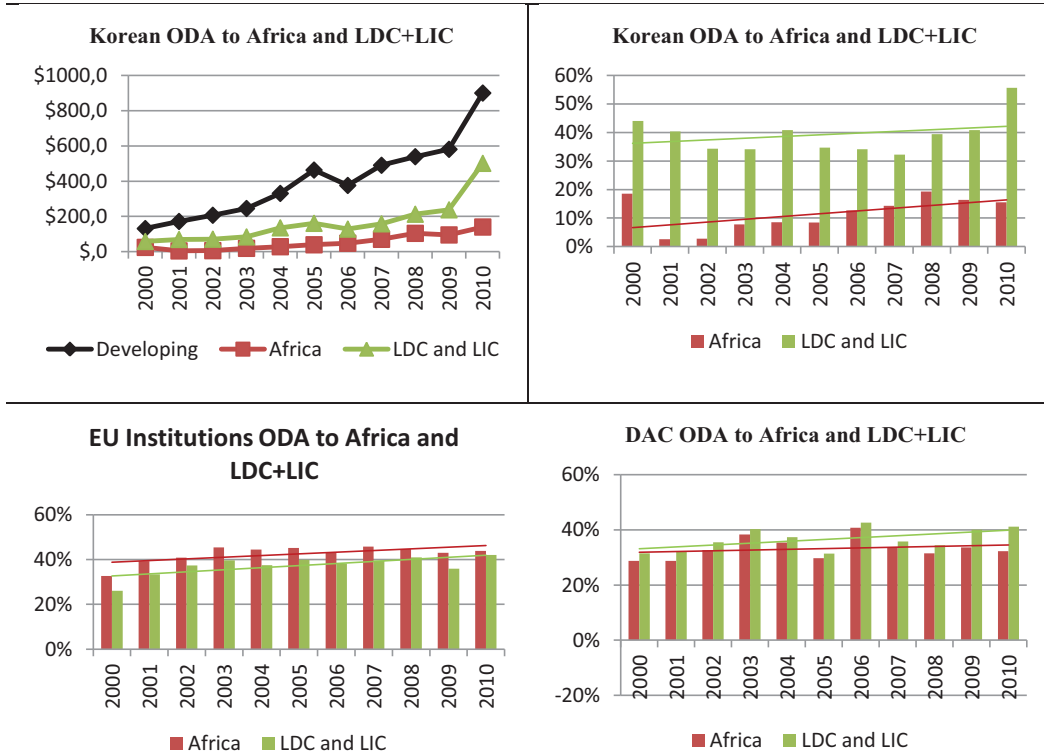
Source: OECD and World Bank Development Indicators

Returning to the Republic of Korea, the increase of aid to Africa was expected, since Korea agreed to it in its Initiative for Africa Development, announced in 2006 (DAC Special Review of Korea, 2008, p. 16). But apart from Asia and Africa, Korea has also increased its aid to the least developed countries (LDC) and low income countries (LIC), which is in line with poverty reduction and Millennium Development Goals (MDG). The figures for LDCs and LICs countries<sup>14</sup> are highlighted in graph 12, and compared with aid to Africa. We can see that since 2000 Korea has increased aid to LDCs and LIC countries at a similar pace to Africa. In 2000, 44% of Korea aid was addressed to LDCs and LIC countries. This proportion oscillated in the mid 2000s but started to grow fast since then, reaching 56% in 2010. Considering this improvement, Korean share of aid to LDCs and LICs countries surpluses both the average share of all DAC members (41%) and the European Union Institutions (42%) in 2010. These figures put previous mentioned criticism on the possible commercial focus of Korean aid in another light.

However, it should be noted that Korea needs to be careful with regards to concessional loans to the least developing countries. As one can observe on graph 13, the loan share for LDCs and LICs countries are still

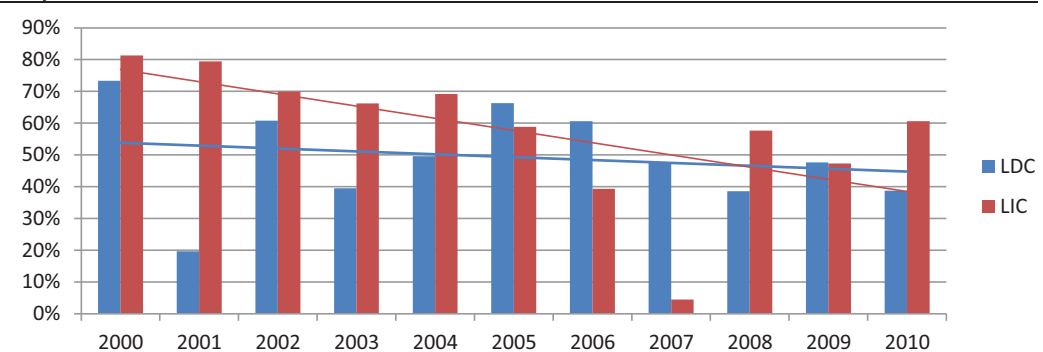
high. Both shares have oscillated during the last decade, but the trends shows that the figures for LIC countries have decreased faster than the LDC share, although it seem to have a setback in the LICs loan share since 2008.

**Graph 12: Aid to Africa and LDCs countries**



Source: OECD

**Graph 13: Korean Loan Share to LDC and LIC countries**



Source: OECD



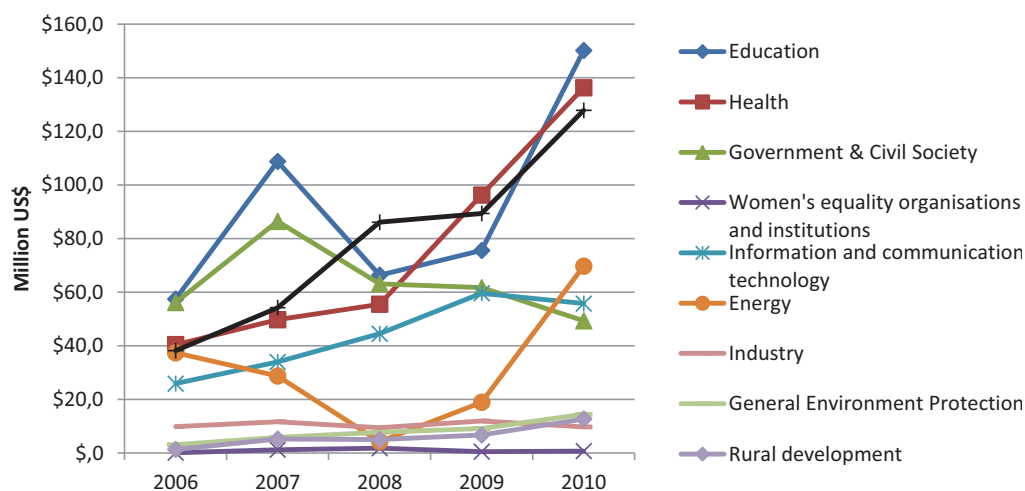
#### 4.4. AID TO WHICH SECTORS

This section focuses on the sectors to which Korean aid is provided. DAC members are making efforts in a way that each donor country concentrates its assistance on a few sectors, increasing the “division of labor” in an attempt to increase aid effectiveness. Korea committed to focus on seven sectors: education, health, governance, rural development, information and communication technology, industry and energy, and environment and gender (OECD, 2008, p.17).

Korean ODA for each of these seven focus sectors from 2006 to 2010 are presented on graph 14. This graph also includes one extra sector, transport and storage, due to the high amount of investments. The graphs show a clear focus on Education, Health and Transport & Storage. Graph 15 highlights education and health and shows that Korean performance in these sectors is higher than the EU and the average of the DAC members.

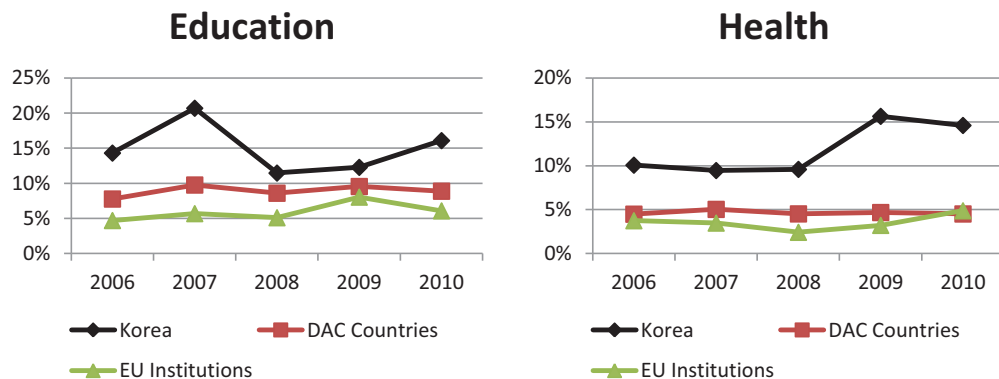
It is interesting to note that the third sector on which Korea has more intensively performed its assistance since 2006 is not included in the list of its focus sectors. The high amount of investments on economic infrastructure, such as transport & storage, is understandable due to the Korean own development experience, and the belief that economic infrastructure and development come together (Soyeun Kim, 2011). However, Korea is investing on economic infrastructure in detriment of other sectors on which the country have committed to focus, such as gender equality, rural development and environmental protection. This can create potentially a skewed investment in some sectors to the detriment of other sectors which in the context of the agreed division of work with other donors may become problematic for some sectors in the area of development cooperation.

**Graph 14: Korean aid by sector**



Source: DAC/OECD - Creditor Reporting System

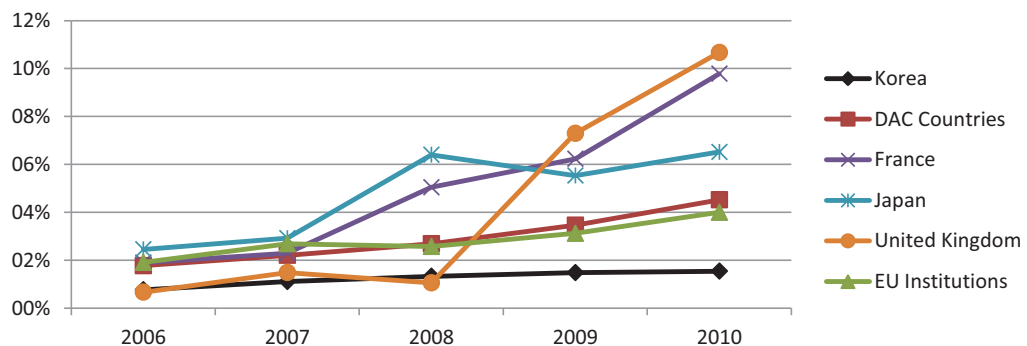
**Graph 15: Korean ODA in Education and Health**



Source: DAC/OECD - Creditor Reporting System

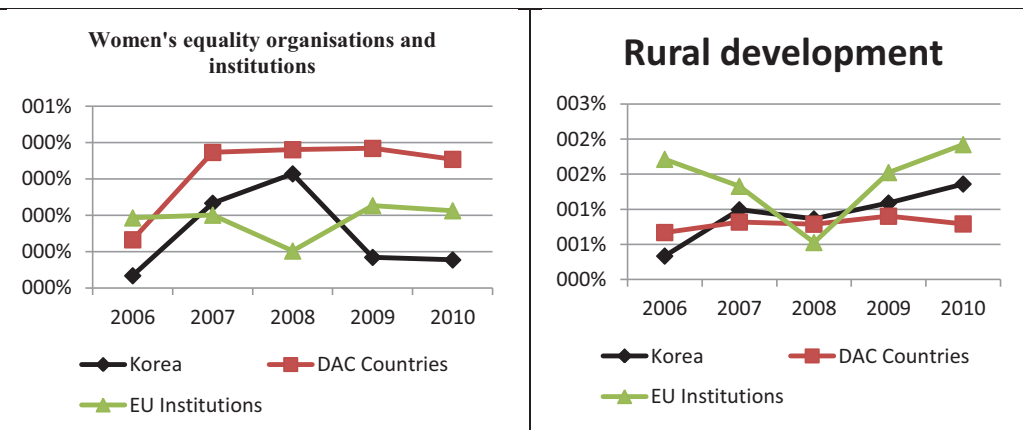
Concerning environmental protection, the developed countries that signed the Rio Conventions in 1992 committed themselves to assist developing countries in implementing the Conventions (Development Co-operation Report 2011, p. 143). Korean assistance to environmental issues has been a small part of the Korean aid program as shown in graph 16. In graph 16 we compare Korean environmental performance with other DAC members. We can see that the share of Korean assistance to environmental issues, ranging from 1 to 1,5% of Korean ODA, has been below the average of DAC members (2-5%) and European Union Institutions (2-4%), and significantly lower than top environmental donor countries such as UK, France and Japan.

**Graph 16: Environmental share of Assistance**



Source: DAC/OECD - Creditor Reporting System

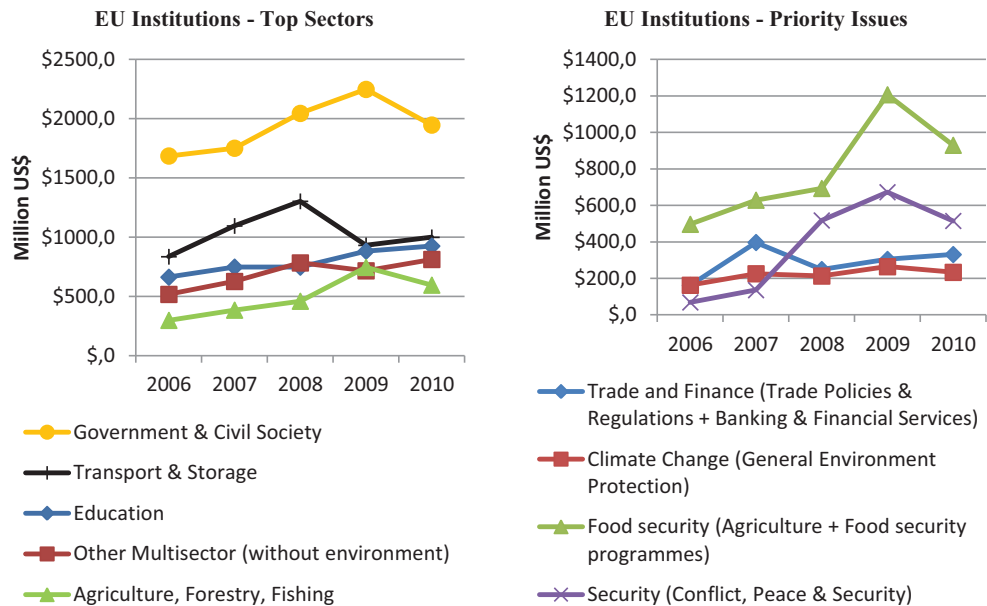
Other focus sectors that have received a small amount of Korean assistance are the promotion of gender equality and rural development. Graph 17 shows the figures for Korea, EU and the average of DAC members from 2006 to 2010. For women empowerment the figures for Korea are small and there is no clear trend. Concerning rural development, there was a marked increase in the last years.

**Graph 17: ODA to Women equality and Rural development**

Looking at the EU performance on their focus sectors (trade and finance, climate change, food security, migration and security) we also can observe incoherence between the priorities and actual disbursements. Graph 18 shows on the left side the five sectors that most received European investments from 2006 to 2010: government and civil society, transport and storage, education, multi-sectors without environment, and agriculture, forestry and fishing. The right side plots the European disbursements in their priority issues, as defined in the Policy Coherence for Development (European Council, 2009): trade and finance, climate change, food security, migration and security. As can be seen, only food security is among the sectors that most received European assistance. We should take into account that the Policy Coherence for Development was released in the end of 2009, and data is available by 2010, which could indicate that EU officials did not have enough time to adjust their disbursements according to the priorities defined in this document.

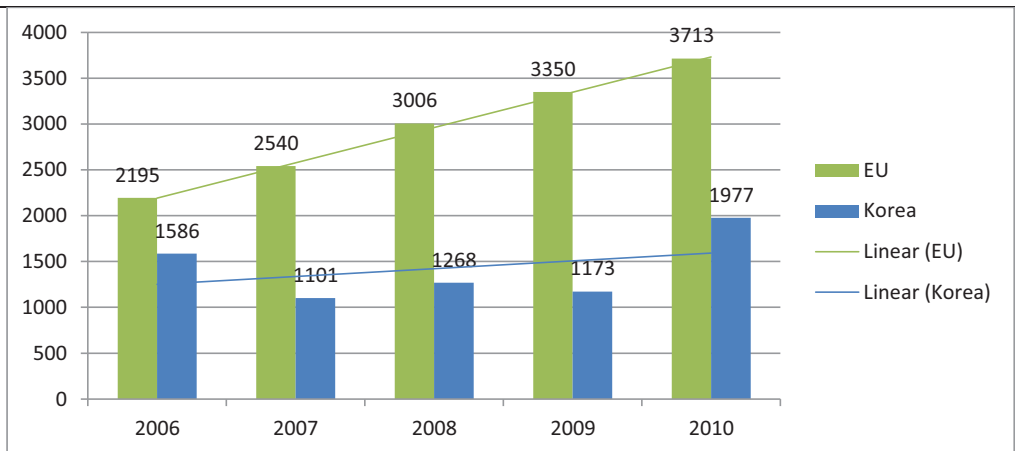
More in general, the idea of the division of work between donor countries is an issue that needs to be further analyzed and addressed both by EU and Korea, and possibly other donors, in order to improve their cooperation. The OECD-DAC has recommended that each donor country concentrates its efforts on fewer sectors to make aid more effective (OECD, 2008). Similarly, in the "EU Code of Conduct on Division of Labour in Development Policy" the European Commission establishes eleven guidelines principles that, among other issues, ask the Member States to concentrate their activities on a limited number of recipient nations sectors, according to the comparative advantage of donor countries, as recognized by both the recipient countries and other donor countries (European Commission, 2007). However, the available evidence indicates that the division of labour is not materializing yet. Graph 19 plots the number of recipient countries and sectors that EU and Korea have assisted from 2006 to 2010. The figures in graph 19 are the sum of the number of sectors assisted by a donor in each recipient country. The figures for Korea show that they reduced the number of countries/sectors in the period 2007-2009, but then there was a setback in 2010, reaching a sum of 1977 sectors assisted by Korea in all recipient countries. In the European case, the figures show a steep increase from 2006 to 2010.

**Graph 18: European Union aid by sector**



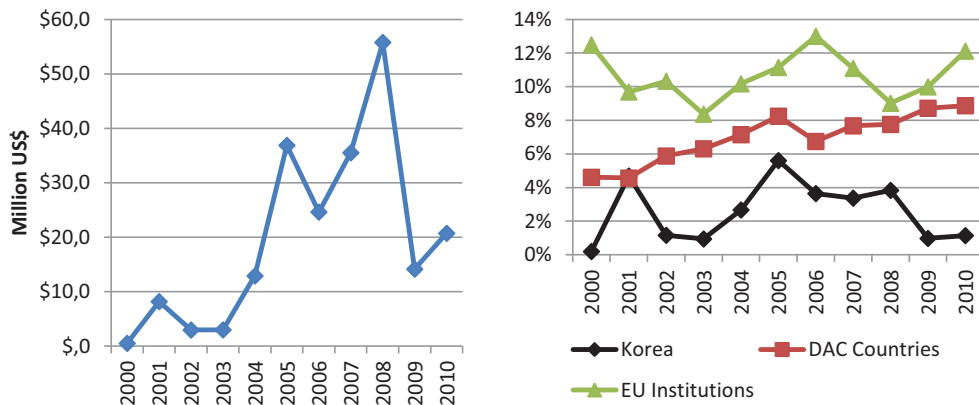
Source: DAC/OECD - Creditor Reporting System

**Graph 19: Total number of recipient countries and sectors assisted by EU and Korea**



Source: DAC/OECD - Creditor Reporting System

Lastly, another important allocation of donor's assistance is humanitarian aid. As shown in graph 20, there was a steep increase in the Korean humanitarian aid from 2000 to 2008. In 2008 there was a peak of US\$ 56 million addressed for this purpose. In percentage terms, Korea reached the peak in 2005, with 5,6% of the total ODA allocated to humanitarian aid, what is modest figure if compared with the EU (11%). Further, there was a setback on the Korean humanitarian aid since 2009, with allocation of only 1% of the total ODA to this important issue.

**Graph 20: Korean Humanitarian Aid**

Source: DAC/OECD - Creditor Reporting System

## 5. ASSESSMENT OF POTENTIAL KOREA-EU COLLABORATION IN THE CONTEXT OF TRIANGULAR COOPERATION

The previous analysis shows that Korea has risen to become an important player in development cooperation and a potentially interesting partner for the EU to further coordinate development cooperation efforts. Both are examples of the so-called DAC-model (Walz and Ramachandran, 2010) and spend significantly on development cooperation geared towards different countries and sectors. In a new era with a strong focus on the emergence of new donors and the development of partnerships in the context of triangular cooperation following the emphasis on South-South cooperation several opportunities might emerge for closer cooperation between the EU and the Republic of Korea.

South-South cooperation (SSC) is defined as “a common endeavor of peoples and countries of the South, based on their common objectives and solidarity” (Yamoussoukro, 2008). It does not intend to replace the traditional North-South cooperation performed by the DAC members. Instead, it aims to add efforts on development cooperation by including developing partners. South-South Cooperation is not a novelty. For example, the Kuwait Fund for Arab Economic Development was set-up in 1961, with the Islamic Development Bank (IsDB). However, this kind of cooperation among developing countries has become more relevant since the failure of the WTO-Doha round in 2006, specially among the BRICS countries (European Parliament, 2012).

Different Southern actors define and perform assistance in distinct ways. It includes grants, loans, lines of credit, debt relief, studentships and technical training, provision of skilled professionals, humanitarian relief, among others. Some elements of South-South cooperation equate to the DAC ODA standards, but the majority of these cooperation are commercial in nature (Mawdsley, 2012). Consequently, we cannot directly compare south-south cooperation with the DAC traditional ODA.

One example of different approaches for developing cooperation is the usual blending of aid with commercial support, in ways that many traditional ODA agencies have eschewed. China is providing large non-concessional loans for infrastructure, natural resource development and industrial parks in poor countries; India

provides sizable export credit lines; Brazil's Embrapa has spread the tropical soil management technology with which it transformed its agriculture to countries with similar environments (Kharas and Rogerson, 2012).

Korea has been recognized as an important actor in South-South cooperation. The country was the fifth largest Southern contributor in 2006 (ECOSOC, 2008, pp.11), performing assistance through technical cooperation grants, program grants, bilateral loans, and other kinds of assistance, mainly to Asian neighbor countries as is highlighted above. The Korean allocation to South-South Cooperation in 2006 was estimated at 10% of all Korean cooperation (ECOSOC, 2008, pp.19). Especially worth mentioning is the notable contribution of a 100% debt relief to the Heavily Indebted Poor Countries - HIPC (ECOSOC, 2008, pp.13).

Korea also seems to invest in triangular cooperation (ECOSOC, 2008), i.e. cooperation between one donor from the global North, one donor from the global South and one recipient country, aimed to provide assistance to this recipient country. Usually in this kind of cooperation, the donor from the global South assists with its particular expertise and experience in the area related to the cooperation program, financially supported by the donor from the global North. For example, at the High Level Event on South-South Cooperation and Capacity Development in March 2010, the Korean government shared experiences in implementing the Knowledge Sharing Program, which aims to assist capacity building efforts of developing countries (EDCF, 2010).

The participation in SSC and triangular cooperation seems to be a commitment of the South Korea government. As stated by the Ministry of Foreign Affairs and Trade, Korea aims to make *"the best use of its unique development experience"* and to *"exert every effort to make meaningful contributions to the international community by playing a bridging role between developing and developed countries"*<sup>15</sup>. The Korean government's view on its role on South-South cooperation is shared with some authors. For example, Jerve (2007, pp. 7) stated that *"the Korean experience is relevant for shaping development policies as well as how to make best use of aid"*. The author also argued that *"Korea can play a crucial role on bridging the gap between donor countries and developing partners by sharing their development experience with the help of aid"* (Jerve, 2007, pp. 8). Also, the South Korean commitment with SSC was reinforced by joining the "Building Block Proposal on South-South and Triangular Cooperation", presented at the 4<sup>th</sup> High Level Forum on Aid Effectiveness in Busan, 2011. The outcome document of the 4<sup>th</sup> High Level Forum on Aid Effectiveness calls for the development community to deepen efforts to maximize the impact of this modality of aid, to strengthen its institutions and to scale-up knowledge sharing to adapt and learn from these experiences (HLF4, 2011).

Similar to the Republic of Korea, the EU and some of their member states such as Finland, France, Germany, Spain and Sweden have been closely involved as partner from the global North in triangular development cooperation (ECOSOC, 2008, pp.14). The EU also support SSC and triangular cooperation, as stated by the European Commission in its *Agenda for Change* (2011). The EU has also joined to the Building Block Proposal at HLF4.

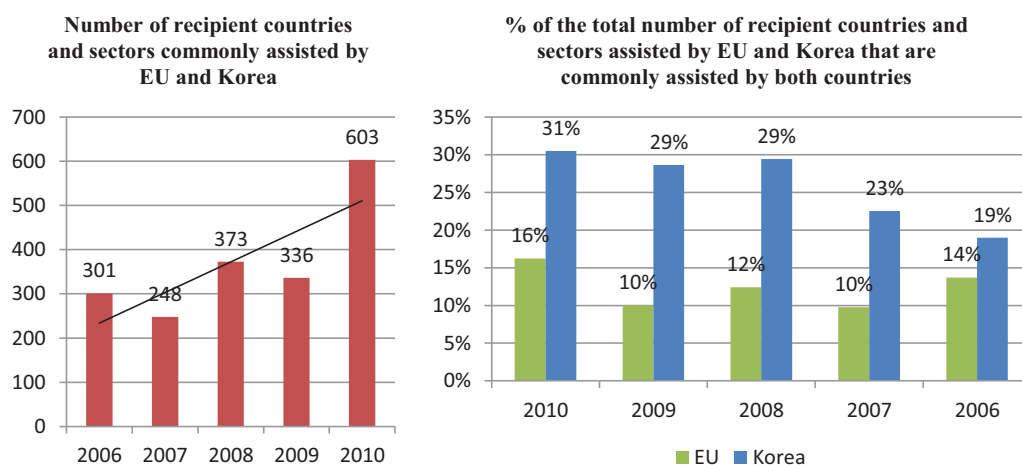
At this stage it is difficult to make any empirical assessment of South-South Cooperation and Triangular cooperation since there is no data available. Korea, as well as all other DAC members, report development assistance in terms of ODA flows to DAC. The DAC database organizes the assistance flows from all DAC members to all developing countries. However, this database does not report separately on the participation of

the DAC members in South-South cooperation or triangular cooperation. Currently, there is no institution that coordinates, compiles and disseminates data related to South-South cooperation and triangular cooperation. This lack of data limits the assessment of such South-South and triangular initiatives.

Although the lack of data makes an assessment on SSC and triangular cooperation difficult, it could be argued that there are several opportunities for EU and South Korea collaboration in this context. Graph 21 shows the number of countries and sectors commonly assisted by Korea and the EU from 2006 to 2010, i.e., among all countries and sectors assisted by Korea and EU separately (see graph 19), graph 21 shows the subset of countries and sectors that are common for these two donors. These shared countries and sectors represent opportunities for collaboration.

The number of common countries/sectors have increased since 2006, representing from 10 to 16% of all countries/sectors assisted by the EU. For South Korea, these common countries/sectors represent 19 to 31% of all countries and sectors. For example, the 603 common sectors assisted by EU and Korea in 2010, represent 14% of the 3713 countries/sectors assisted by the EU and 19% of the 1977 countries/sectors assisted by Korea in this year. It seems that the trend is going to the opposite direction proposed in the guidelines for the division of labour, as discussed in the previous section. On the other hand, if one aims to promote triangular cooperation such overlap is inevitable and to a degree beneficial. This overlap also shows that there are real opportunities for triangular cooperation. For example, in 2010, both EU and Korea assisted Uganda and Kenya in agricultural development. If EU and Korea share information on the projects that each one is assisting in these countries, both EU and Korea could better coordinate their efforts and increase the aid effectiveness in these countries. Another example is that of Mozambique in 2010 where both EU and Korea have invested in agricultural development. Moreover, it creates potential opportunities with other new emerging donors such as Brazil, that have also invested in the agricultural sector in the Lusophone Africa (Vieira and Alden, 2011)

**Graph 21: Common countries and sectors assisted by Korea and The European Union**



Source: DAC/OECD - Creditor Reporting System, 2012

## **6. CONCLUSION**

In this paper the development cooperation policies of the Republic of Korea were analyzed and compared to those of the European Union with the aim of identifying the differences and similarities between them. Such an analysis can contribute to a better understanding of the possibilities and limitations of further cooperation in the field of development cooperation in order to further develop efficient and effective development cooperation policies which are able to reduce poverty and achieve the Millennium Development Goals.

The objectives of both actors were discussed highlighting a significant degree of alignment. In this sense, opportunities for further collaboration between these actors are possible. In addition, Korea can offer unique experience to the EU. As a recipient country it made good use of foreign aid in order to promote economic and social development. Today, the Republic of Korea is figuring among the most developed countries in the world. Its unique experience can be used to strengthen the efforts to eradicate poverty and achieve the Millennium Development Goals.

As a new donor, Korean development cooperation policy has undergone marked changes in its early history following some early criticisms which, to a degree, have been addressed by the South Korean authorities. First, with regards to the focus on Asian recipient countries one can observe that, although the share going to Asian countries is still high (65%), the share of Korean aid addressed to Africa and to the LDC countries has increased consistently over the last decade. Second, the use of concessional loans (versus grants) is an issue on which Korea has changed its policy. Although the percentage of loans is still high, there was a very significant drop from 65% to 39% in one decade. Third, the concession of tied aid has also been reduced significantly and the Korean government has already created a plan to untie 75% of its overall ODA by 2015.

Finally, the analysis showed that Korea is concentrating, following recent agreements on the division of labor in development cooperation, its aid to specific countries and sectors. However, here much remains to be done, as is the case for the EU. Both EU and Korea spread aid over a large number of countries and sectors. The OECD-DAC and the EU are engaged on efforts to achieve a better division of labor, recommending that each donor concentrates on a fewer number of countries and sectors in order to pursue aid effectiveness. This objective has not yet been achieved and some evidence points in the other direction. Notwithstanding that more attention should be put on this issue, it should also be noted that some overlap is not necessarily bad especially in a context which aims to promote triangular cooperation. For triangular cooperation to be successful there should be a minimal overlap in countries and sectors as was pointed out in the last section. This focus on triangular cooperation and the building of partnerships offers many opportunities for EU-Korea cooperation. Follow up research should try to identify some existing project on which collaboration is taking place with the aim of generating insights on how to multiply cooperation. This analysis has shown that there is a fertile ground to further collaborate.



## Endnotes

<sup>1</sup> Art. 208(1) TFEU states: 'Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action. The Union's development cooperation policy and that of the Member States complement and reinforce each other.'; Art. 21 TEU.

<sup>2</sup> European Commission, Communication to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, 'Increasing the impact of EU Development: an Agenda for Change', COM (2011) 673 final, Brussels, 13 October 2011.

<sup>3</sup> Joint Statement by the Council and the Representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' (2006/C 46/01), 2006, § 7.

<sup>4</sup> Council Of the European Union, Council Conclusions 'EU Strategic Framework and Action Plan on Human Rights and Democracy' Luxembourg, 25 June 2012.

<sup>5</sup> Council Of the European Union, Council conclusions 'The Future Approach to EU Budget Support to Third Countries' Brussels, 14 May 2012.

<sup>6</sup> Development cooperation is a shared competence of the Union and its Member States (albeit with the particular feature that the exercise of EU competence does not prevent the Member States from exercising theirs (Art. 4(4) TFEU), and strategies have been developed to ensure that the policies of the EU and the Member States are consistent and effective.

<sup>7</sup> OECD Development Assistance Committee (DAC) welcomes Korean Membership, available at: [http://www.oecd.org/document/50/0,3343,en\\_2649\\_33721\\_44141618\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/50/0,3343,en_2649_33721_44141618_1_1_1_1,00.html), accessed on: 10/May/2012.

<sup>8</sup> Available at: <http://www.mofat.go.kr/ENG/policy/oda>. Accessed on: 14/Jun/2012.

<sup>9</sup> Council Of the European Union, Council Conclusions 'EU Strategic Framework and Action Plan on Human Rights and Democracy' Luxembourg, 25 June 2012.

<sup>10</sup> Council Of the European Union, Council conclusions 'The Future Approach to EU Budget Support to Third Countries' Brussels, 14 May 2012.

<sup>11</sup> At the sixth EU-Korea summit, the parties agreed to establish bilateral consultations to strengthen cooperation in the areas of human rights. This could potentially include exchanges on how Korea's development policy could integrate human rights in line with the EU's efforts to integrate human rights (Joint Press Statement, 2012)

<sup>12</sup> The Transparency Index is an attempt to measure the availability and accessibility of aid flow information in a timely, systematic and comparable manner. It rates 31 bilateral and multilateral donor agencies on six measures of transparency: membership in the International Aid Transparency Initiative (IATI); recording of project title and descriptions; detail of project descriptions; reporting of aid delivery channels; completeness of project-level commitment data; and the share of net ODA that donors give to recipients with good monitoring and evaluation framework,

<sup>13</sup> See Milner and Tingley (2010) for more details on a principal-agent model.

<sup>14</sup> Least Developed Countries are countries listed by the United Nations which are poor (GNI per capita less US\$ 750), weak on human resources and are economic vulnerable. The list includes 33 African countries, 14 Asian and 1 Latin American country (Haiti). Low Income Countries are listed by the World Bank, and includes countries with GNI per capita of US\$ 1025 or less. The list also includes African, Asian and Latin American countries. Some countries (for example, Benin and Congo Dem. Rep.) are listed both as LDCs and LICs, but the data presented on graph 12 do not overlap the ODA received by these countries. However, the ODA to African countries that are in the list of LDCs and LICs in graph 12 are included in both lines.

<sup>15</sup> See: [http://www.mofat.go.kr/ENG/policy/oda/index.jsp?menu=m\\_20\\_11](http://www.mofat.go.kr/ENG/policy/oda/index.jsp?menu=m_20_11)

## References

Amsden, A. (2002) *The Rise of "The Rest". Challenges to the West from Late-Industrializing Economies*. Oxford: Oxford University Press

Bartels, L. (2008) 'The Trade and Development Policy of the European Union' in M. Cremona (ed.), *Developments in EU External Relations Law*, Oxford, Oxford University Press.

Chun, Hong-Min, Munyi, Elijah N., Lee, Heejin (2010). South Korea as an Emerging Donor: Challenges and Changes on its Entering OECD/DAC. *Journal of International Development* 22, 788-802 (2010).

Council of The European Union (2009). Council conclusions on Policy Coherence for Development (PCD). 2974th External Relations Council meeting, Brussels, 17 November 2009. Available at: [http://ec.europa.eu/europeaid/where/asia/regional-cooperation/support-regional-integration/asean/documents/council\\_conclusions\\_17th\\_november\\_2009.pdf](http://ec.europa.eu/europeaid/where/asia/regional-cooperation/support-regional-integration/asean/documents/council_conclusions_17th_november_2009.pdf)

Council Of the European Union (2012). The Future Approach to EU Budget Support to Third Countries. Brussels, 14 May 2012.

Council Of the European Union (2012). EU Strategic Framework and Action Plan on Human Rights and Democracy. Luxembourg, 11855/12, 25 June 2012.

Economic Development Cooperation Fund (2010). EDCF Annual Report. Korea, 2010. Available at: <http://www.edcfkorea.go.kr/edcfeng/index.jsp>. Accessed on: 14/Jun/2012.

Evans, P. (1995) *Embedded Autonomy*. Princeton: Princeton University Press

European Commission (2003). Communication from the Commission to the Council and the European Parliament. The European Union and the United Nations: The choice of Multilateralism. Brussels 10.9.2003. COM (2003)526 Final

European Commission (2006). The European Consensus on Development. Official Journal of the European Union, 2006/C 46/01.

European Commission (2008). The Treaty on the Functioning of the European Union (TFEU) – Consolidated Version. Official Journal of the European Union, C 115/47, 9 May 2008.

European Commission (2010). The Treaty on European Union – Consolidated Version. Official Journal of the European Union, C 83/13, 30 March 2010.

European Commission (2011). Increasing the impact of EU Development Policy: an Agenda for Change. Brussels, 13.10.2011. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0637:FIN:EN:PDF>. Accessed on: 06/06/2010.

European Commission (2011). Thematic evaluation of the European Commission support to respect of Human Rights and Fundamental Freedoms - Ref. 1298. Directorate-General Development and Cooperation, Evaluation Unit, Brussels, December 2011.

European Commission (2012). Republic of Korea-EU Summit – Joint Press Statement. Brussels, 28 March 2012, Memo 12/224.

European Parliament. 2012. The Role of BRICS in the Developing World. Directorate-General for External Policies of the Union. European Union, Brussels, 2012.

European Commission (2007). EU Code of Conduct on Division of labour in Development Policy. Communication from the Commission to the Council and the European Parliament. Brussels, 28.2.2007.

Ghosh, Anirban; Kharas, Homi. 2011. The Money Trail: Ranking Donor Transparency in Foreign Aid. *World Development* Vol. 39, No. 11, pp. 1918-1929, 2011.

Hackenesch, Christine. 2011. European Good Governance Policies Meet China in Africa: Insights from Angola and Ethiopia. European Development Co-operation to 2020 (EDC2020) consortium project. Available at: [www.edc2020.eu](http://www.edc2020.eu)

HLF4 – 4<sup>th</sup> High Level Forum on Aid Effectiveness (2011). SOUTH-SOUTH AND TRIANGULAR COOPERATION: UNLOCKING THE POTENTIAL OF HORIZONTAL PARTNERSHIPS FOR BETTER DEVELOPMENT OUTCOMES. 29 Nov. – 1 Dec. 2011, Busan, Korea

Joint Press Statement (2012) 'Republic of Korea-EU Summit' Brussels, 28 March 2012. [http://europa.eu/rapid/press-release\\_MEMO-12-224\\_en.htm?locale=FR](http://europa.eu/rapid/press-release_MEMO-12-224_en.htm?locale=FR)

Kharas H 2007 'The new reality of aid' Presented at Brookings Blum Roundtable 2007 ([http://www.brookings.edu/~media/Files/rc/papers/2007/08aid\\_kharas/08aid\\_kharas.pdf](http://www.brookings.edu/~media/Files/rc/papers/2007/08aid_kharas/08aid_kharas.pdf)) Accessed 27 August 2012.

Kharas, Homi; Rogerson, Andrew (2012). Horizon 2025: creative destruction in the aid industry. Overseas Development Institute, July 2012. Available at: [www.odi.org.uk/resources/](http://www.odi.org.uk/resources/).

Keohane, Robert O., Macedo, Stephen, Moravcsik, Andrew. 2009. Democracy-Enhancing Multilateralism. *International Organization*, 63, winter edition, pp. 1-31.

Keukeleire Stephan & H.Bruyninckx Hans, (2011) The European Union, the BRIC's and the emerging new world order. In: C. Hill, & M. Smith (eds.), *International Relations and the European Union*. Oxford: Oxford University Press.

Kim, Jiyoung. Foreign Aid and Economic Development: The Success Story of South Korea. *Pacific Focus*, 2011, Volume: 26 Issue: 2 Pages: 260-286.

Kim, Soyeun. Bridging Troubled Worlds? An Analysis of the Ethical Case for South Korea Aid. *Journal of International Development* 23, 802-822 (2011).

Marx, A. Kitaoka, K. & A. MacGillivray (2011) 'Private Sector Development, Knowledge Management and Networks', in, UNIDO, *Networks for Prosperity. Achieving Millennium Development Goals through Knowledge Sharing*. Vienna: UNIDO

Mawdsley, Emma. The Changing geographies of foreign aid and development cooperation: contributions from gift theory. *Transactions of the Institute of British Geographers*. Volume 37, Issue 2, pages 256–272, April 2012.

Milner, Helen V. and Tingley, Dustin H., The Choice for Multilateralism: Foreign Aid and American Foreign Policy (2011). APSA 2011 Annual Meeting Paper. Available at SSRN: <http://ssrn.com/abstract=1900147>.

Mungcal, Ivy (2012). For South Korea, aid to Uganda marks a trend. Devex. Available at: <http://www.devex.com/en/news/south-korea-and-its-oda-spending-in-uganda/78856>. Accessed on: 8th August, 2012.

OECD. 2008. DEVELOPMENT CO-OPERATION OF THE REPUBLIC OF KOREA: DAC Special Review. 2008. OECD, Paris.

OECD. 2011. DAC Report on Multilateral Aid. OECD, Paris.

OECD. 2012. European Union: Development Assistance Committee (DAC) Peer Review 2012. 2012. OECD, Paris.

OECD. 2012. OECD.Stat (database). Available at: <http://stats.oecd.org/Index.aspx>. Accessed on: 3rd March 2012.

Slaughter, A. (2004) *A New World Order: Government Networks and the Disaggregated State*. Princeton: Princeton University Press

Slaughter, A. & D. Zaring (2006) *Networking goes international: An update*, in, Annual Review of Law and Social Science, 211

The Reality of Aid (2008). *Reality of Aid 2008 country report: Republic of Korea*. Available at: <http://www.realityofaid.org/>

United Nations Economic and Social Council (ECOSOC). 2008. *Trends in South-South and triangular development cooperation*. April 2008. Available at: <http://www.un.org/en/ecosoc/newfunct/pdf/dcf%20bangkok%20meeting.pdf>

Walz, Julie and Ramachandran, Vijaya (2010). Brave New World: A Literature Review of Emerging Donors and the Changing Nature of Foreign Assistance. Working paper 273, Center for Global Development, November 2010.

UNIDO and Leuven Centre for Global Governance Studies (2011) *Networks for Prosperity. Achieving Millennium Development Goals through Knowledge Sharing*. Vienna: UNIDO

YAMOUSSOUKRO (2008). Yamoussoukro Consensus on South-South Cooperation. Twelfth Session of the Intergovernmental Follow-up and Cooperation Committee on Economic Cooperation among Developing Countries Yamoussoukro, Côte d'Ivoire, 10-13 June 2008. Available at: [http://www.g77.org/ifcc12/Yamoussoukro\\_Consensus.pdf](http://www.g77.org/ifcc12/Yamoussoukro_Consensus.pdf)

## EU-KOREA RELATIONS TO PROMOTE REGULATORY COOPERATION IN ECONOMIC POLICIES, IN PARTICULAR INDUSTRIAL DEVELOPMENT POLICIES

WOLFGANG PAPE

### 1. INTRODUCTION

**Industrial policy** is often simply associated with 'picking winners' and thus distorting competition, while exposing the government to capture by vested interest.<sup>1</sup> However, free competition without rules is self-destructive and leads in the end to winner-takes-it-all monopolies. Also, the priorities given to overarching public interests, like in promoting clean technologies to combat climate change, have shown the need for regulatory approaches to industrial policy.

Still, for many Europeans just putting these two notions of industrial policy and competition policy in one sentence still tends to conjure up a great ideological divide between Colbertian "*dirigistes*" and economic libertarians. On the one hand, there is faith in the ability of governments to successfully build, direct, and protect the supply side of the economy. On the other hand, we find a belief that markets should only be subject to rules to guarantee a level playing field, but that they are otherwise best left to their own devices<sup>2</sup>.

In addition, the recent **economic crises** have strengthened the arguments for governmental intervention for reform and growth, thus overcoming the earlier trend towards market-fundamentalism, spearheaded in particular by the Anglo-Saxons in the era of Ronald Reagan and Margaret Thatcher when policy intervention into the economy had fallen into disrepute.

In view of the fact that regulatory approaches to industrial development policies, however, differ not only over time but also considerably in concept and practice between Europe and Asia<sup>3</sup> (and here in particular between the EU and Korea), it is important to first understand their **divergent socio-cultural backgrounds** and evolutions to date, before detailing their current situations, potential for cooperation and mutual learning as well as expected future directions.

### 2. EU INDUSTRIAL DEVELOPMENT POLICIES

#### 2.1. BACKGROUND

Many observers, predominantly in Asia, claim that Europe's cultural homogeneity, in particular with Christianity as a more or less common basis, has facilitated also her economic integration. The concept of a common 'European Economic Model' became most eminent during the dynamic 'Golden Age of European Growth' from the early 1950s to the mid-70s. Still today, the World Bank identifies six unique features of the **European development model**. They include elements like: more accountability of enterprises not only for profits by shareholders, but also for social and environmental consequences of their actions; recognition of innovation, research and development and tertiary education as primarily a responsibility of the state; workers enjoying the most effective

protection; and European governments being most representative, decentralised and distributive and with the most advanced supranational coordination.<sup>4</sup>

As part of industrial policy, it is in the competition policy of the EU where all Member States come together under the '*acquis communautaire*' of the relevant provisions based on the Lisbon Treaty's articles 101 to 109. These basic rules outlaw collusion and abuse of market power. The challenge for the Commission in applying these rules is to prioritise its enforcement resources to focus on remedying the most serious impediments to the functioning of markets. Targeted enforcement of this kind -centred on sectors which are key to competitiveness as well as behaviours which produce the most harmful economic effects- are at the core of EU industrial policy.

- a) However, apart from the internally common elements of European economic policy in comparison to other parts of the world, it has become increasingly evident during the current Euro-crisis, affecting mainly the Mediterranean members of the southern periphery of the Euro-zone, that the European socio-cultural background of economic policies is as **diverse** as the various sub-models that still compete quite distinctly within the EU as a sort of sub-variety of capitalism. These models hardly follow national borders, but they rather form political and cultural clusters of Member States with similar approaches to economic policies. Their variety of economic institutions conditions levels of social protection, distribution of income and the availability of collective goods.<sup>5</sup> However, behind this analysis lies the fundamental debate between political philosophies of neo-liberalism and social democracy.<sup>6</sup> Accordingly, one could basically distinguish liberal market economies (LMEs) from coordinated market economies (CMEs) , or *cum grano salis* in geographical terms in Europe between north and south.

It can be generalised that the Nordic Member States of Denmark ('flexi-curity'), Finland and Sweden, plus also the Netherlands feature higher degrees of social protection and fiscal intervention with a variety of active policy instruments, while the more conservative Mediterranean region of especially Greece, Italy, Portugal and Spain delivers less efficiency and equity. The more liberal Anglo-Saxon islands of the UK and Ireland allow a higher incidence of low-paid employment ('hire'n fire'), although activation measures are important. The so-called Rhine-Model of mainly Austria, Belgium, France and Germany focuses more on concerted actions ('*Mitbestimmung*') and keeping up employment. However, unlike Germany, France owes more of its concertation to common career patterns of an elite that in addition has much closer ties to the states and less links to the rest of the firm. In view of these varieties even within Europe, some economists call the notion of one single "European social model" misleading.<sup>7</sup>

Earlier works of political sociologists have grouped together three models with more emphasis on the welfare systems, namely the most liberal approach by the Anglo-Saxons, the social-democratic approach of Scandinavian countries, and the continental and Mediterranean approach combined as the conservative approach.<sup>8</sup> In particular the last grouping that unites countries on both sides of the Alps is hardly tenable anymore today. Since the Germans insist on austerity reforms along their own experience under Schroeder to be imposed in Greece and other southern countries of the EU, the wide policy cleft

over the Alps has become more evident. Likewise, the commonality between France and Germany within the Rhine-Model seems to diminish in view of the new French President Hollande having taken office in May 2012 by calling for a new Growth Pact rather than austerity measures, in opposition now with the quartet of Germany, the Netherlands Sweden and Denmark.

It remains to be seen if these recent tendencies are merely short-term political shifts reflecting the fluctuation of often personalised election results, or long-term trends in social modelling. It is extremely difficult to evaluate different models not only for the general voting public but also even for experts, because underlying cultural values<sup>9</sup> as well as political and economic circumstances change over time. Furthermore, increasing interdependence beyond national and regional borders in the current wave of globalisation greatly affect the outcome of any model. In 1999, The Economist<sup>10</sup> listed up seven models worldwide: America, Japan, East Asia, Germany, Sweden, New Zealand and the Netherlands. At that time, it could still conclude that the "American model is the most successful job-creating machine, but Germany and Japan are better at combining growth with equality." Such a statement would certainly not be correct anymore in 2012.

- b) In the context of comparing the European economic model(s) with the Korean approach, it is instructive to also consider the distinction made earlier by the French author Michel Albert in his best-selling book *"Capitalism contre capitalism."* He emphasised the differences between the two western models of Anglo-Saxon liberalism and of the countries along the Rhine (*"en recul"*) in comparison also to the Japanese model.<sup>11</sup> The latter in turn has been very influential in Korea's development, since it has been under strict Japanese occupation for some decades until the end of WWII and even afterwards still largely followed major elements of the neighbour's regime thanks to the model's success there until the bust of the Japanese bubble in the 1990s.

Notably, distinctions made based on the relational firm as the actor in the centre of the economy<sup>12</sup> lead to findings of common denominators in the economies of Japan and South Korea in view of their histories of *zaibatsu/keiretsu* and *chaebol*, which are enjoying a highly embedded autonomy.<sup>13</sup> This coordination in company-groups with connectivity vertically as well as horizontally by labour-unions, value-adding chains and managerial oversight of big and widely diversified conglomerates like Samsung and Hyundai clearly divert from the continental European industry-based orientation not only of the blue-collar workforce but also of the management and public policy here.

- c) From the angle of **legal systems**, one has to also point out the differences amongst the EU Member States. On the one hand there is the continental system of codification and, on the other hand, the system of case law still widely practised on the Anglo-Saxon islands, with the UK eminently not even having a written constitution. These differences also have impacted the reception of legal systems in East Asian countries, including Korea, which basically adheres to the principles of continental style codifications of law.

In terms of industrial standard-setting, Europe's multi-coordinated approach confronts a congeries of nationally coordinated market economies in Asia<sup>14</sup>, led by Japan and increasingly also China and South Korea. The latter's economy is highly dominated by *chaebol*, they likewise exert an eminent impact on the standards in Korea.

## 2.2. CURRENT SITUATION IN THE EU

Against this socio-cultural background of **increasing unity in diversity**, the Member States agreed in the 2010 Lisbon Treaty that the primary legal basis for industrial policies at EU level in article 173 TFEU should concentrate mainly on competitiveness issues ranging from entrepreneurship and SME promotion to fostering R&D and innovation. In this framework, the European Commission laid out a strategy in the Industrial Policy Communication of 2010<sup>15</sup> for sustainable **growth, competitiveness and job creation** in the context of the 'Europe 2020 Strategy.'

Focusing on the long-term goals of competitiveness and sustainability, the Communication over 33 pages sets out policies ranging from horizontal to sector-specific measures, and covers areas from raw materials and infrastructure to energy and space exploration. It highlights numerous action points addressed to the Commission itself as well as Member States, which become objects of ex-ante and ex-post evaluations for control of efficiency and effectiveness. 'Competitiveness-proofing' and moving towards 'smart regulation' are considered essential at all levels of regulatory intervention and across all of the different policy fields affecting industrial competitiveness.

This 2010 Communication of 'Putting Competitiveness and Sustainability at Centre Stage' is currently submitted to public consultation until September 2012 in order to filter out a limited number of new initiatives that are capable to deliver results as well as actions to correct problems emanating from the present implementation of industrial policy.

However, recent developments in the wake of the current economic crisis and the fast changes in economic sovereignty of certain countries may lead to more extensive interpretations and **stronger economic governance** in general at European level. They clearly go beyond even the 'European Semester' and 'Europe 2020 Strategy,' which can already considerably impact industrial policies *strictu sensu*, as for instance concerning competitiveness of industries sector-wise or horizontally.

The economic situation in Europe since 2008 has revealed the importance of stronger economic governance and coordination at EU level.<sup>16</sup> Hence, the Commission set up the so-called '**European Semester**' as a new governance instrument based on proposals put forth already in 2010. Approved by the Member States, the European Semester has since 2011 allowed EU institutions to coordinate Member States' budgetary and economic policies even before their adoption by their respective national parliaments in order to assure that they are in line with the EU's Stability and Growth Pact as well as the Europe 2020 Strategy.

Each year, the EU Semester begins a new six-month cycle in January with the Annual Growth Survey by the Commission (as the basis for an analysis of the progress made towards Europe 2020 goals), as well as a macro-economic report and the joint employment report. It aims to establish an integrated approach to recovery



and growth, concentrating on key measures to be taken by the EU institutions and then by Member States following country-specific recommendations.

Such ex-ante coordination of national budgets at EU level, while they are still under preparation and before national parliaments' approval, can be considered critically as a significant interference into budgetary sovereignty of Member States, although they are still to be discussed by Council formations and the European Parliament. The Member States then explain their medium-term budgetary strategies through Stability and Convergence Programmes and, at the same time, draw up National Reform Programmes setting out the action they will undertake in areas such as employment, research, innovation, energy or social inclusion. Subsequent to an assessment by the Commission, the Council will issue country-specific guidance by mid-year, in particular if policies and budgets are "out of line" by diverging e.g. from realistic macroeconomic assumptions for fiscal consolidation, competitiveness of industries, imbalances and so forth.

The Commission has also reinforced governance by a set of rules that do allow more rigorous surveillance and enforcement mechanisms, complemented by a concrete "toolbox" following consultations with i.a. the Task Force on Economic Governance, which is chaired by the President of the European Council.

In particular, the so-called 'Six-Pack' of December 2011 with five Regulations and one Directive allows fiscal surveillance as well as macroeconomic surveillance under the new Macroeconomic Imbalance Procedure and recalls the medium-term objective - so-called preventive arm – that the general government deficit must not exceed 3% of GDP and public debt must not exceed 60% of GDP, with the possibility of financial sanctions of up to 0.5% of GDP.

The latest strengthening of economic governance at EU level in parallel with the 'Six-Pack' can be seen in the Treaty on Stability, Coordination and Governance (TSCG). In May 2012 it was still to be ratified by more Member States to reach the minimum of at least twelve "Euro-area Member States" in order to enter into force with its "Fiscal Compact." As an only intergovernmental agreement signed by just 25 Member States it will not become EU law as such, but it is more restrictive with a lower limit of a structural deficit of 0.5% of GDP. Independent institutions shall monitor over the compliance with these stricter rules of economic governance, which shall be implemented in national law as binding provisions, preferably in Member State constitutions.

In addition, in the financial sector the Commission is overseeing a 'rule-making spring' for post-crisis regulation of hedge funds as a follow-up of the Alternative Investment Fund Managers Directive. Amid public anger over financial excess, the Commission proposed rules on governance standards, reporting requirements, stricter liabilities, minimum capital and pay constraints on an industry that had enjoyed relatively free reign. A draft of 110 pages of 'supplementary rules' relates to specialist issues. Some in the industry fear it would raise costs and shut out US-American and Asian fund managers. While there is concern that the openness of the EU market is maintained also for those from afar, the Commission is taking a tougher approach regarding financial services groups outside the EU in order to have them effectively work under similar rules and supervision.<sup>17</sup>

Also, the exclusive competence of the EU for **competition rules** (article 3 TFEU) form part and parcel of industrial policy in the wider sense<sup>18</sup>. Likewise, Chapter 11 of the EU-Korea FTA comprehensively describes competition as a major field of cooperation. Furthermore, in the light of the FTA, sectoral EU policies beyond

space exploration (article 189 TFEU) come under industrial policy and thus are apt for cooperative efforts. Moreover, since non-tariff barriers (NTBs)<sup>19</sup> are at the core of regulatory issues between the EU and Korea, NTB-related questions of industrial development policy such as certain standard settings and IPR policies should become object of bilateral discussions and monitoring.

Similarly, the areas of policies on entrepreneurship, innovation, clusters, sectoral regulatory policies and even the **promotion of SME** internationalisation belong to relevant EU industrial policies. Thereby, they are often hard to distinguish from trade policies, including export promotion, which still fall into Member State competence. This is also reflected in the often overlapping activities between the pertinent departments within the European Commission, in particular on SME internationalisation<sup>20</sup> initiatives taken at the same time by the Directorate-General for Enterprise and Industry (DG-ENTR) and the Directorate-General for Trade (DG-Trade). Lacking a legal basis for export promotion as such, the Commission nevertheless managed in connection with the 'Small Business Act' of 2008<sup>21</sup> to gain agreement with Member states to establish an IPR-Helpdesk and SME Centres in China, India and Thailand etc., apart from setting up an Enterprise Europe Network that includes branches not only in neighbouring countries in Europe but also in Seoul and in provinces of China.

An Action Programme for the improvement of the business environment by **cutting red tape** in Europe could only be reached in shared responsibility of the EU Institutions and the Member States. The joint target set in 2007 aimed to reduce administrative burdens for businesses by 25 % by 2012. The Commission has proposed measures by 2012 that reduce administrative burdens by up to 33% or more than EUR 40 billion, in particular for more than 5 million small companies. In February 2012, the Commission published the so-called 'Stoiber Report' under the title "Europe can do better." This report by a High Level Group of Independent Stakeholders on Administrative Burdens shows examples of how Member States implement EU law in an intelligent way so that it is not hampered by unnecessary administrative burden at national level. Smart regulation should further improve the business environment following the 74 best practices listed for improving the implementation of EU legislation.<sup>22</sup>

In this context, one might theoretically go as far as to include in this paper complementing industrial policies by individual Member States. However, examining all 27 Member States' industrial policies for this purpose would overstretch the capacity of this exercise.<sup>23</sup>

In terms of procedure, at least mention should be made of the EU procedural specificities of so-called '**Comitology**,' the particularly complex and intransparent way in which most of the implementation of rules of industrial regulation are decided.<sup>24</sup>

### **3. KOREAN INDUSTRIAL DEVELOPMENT POLICIES**

#### **3.1. BACKGROUND**

Unlike the diversity in the EU, the high cultural **homogeneity** of Korea<sup>25</sup> and its coherent resistance against foreign powers, especially its neighbours China and Japan, has generated a strong identity as a nation. The

concept of government in the Korean tradition is principally derived from the Confucian doctrine that served as official state philosophy over half a millennium since the Choson Dynasty started at the end of the 14<sup>th</sup> century.

### **3.2 HISTORY**

In this **Confucian tradition**, government is regarded as a secular authority conferred by the mandate of heaven, and thus it rules through an authoritarian hierarchical order. Here lies also the origin of the pervasive submissiveness of Koreans to an elite, formerly the '*yangban*' class.<sup>26</sup> Subsequently, the **Japanese annexation** regime radically transformed the agriculture-based Korean economy into a supply base for the Japanese industry preparing for WWII.

During this rapid industrialisation the share of manufacture in production grew from less than 4 percent to over 20 percent.<sup>27</sup> After Japanese rule, the US-American military government retained the Japanese-style centralised bureaucracy in Korea to avoid a vacuum in the growing confrontation with the communist North.<sup>28</sup>

Only in the late 1980s, constitutional reforms towards civilian government and wider freedoms were introduced along with elections for local councils throughout the country. Nevertheless, the role of local communities in economic governance until now remains limited. Recently, the self-reliance ratio of local authorities has even dropped considerably to 30 percent and less, while their debt burdens surge with municipal bonds having been used for infrastructure projects to build railways and residential towns. The central government has bought up most of the municipal bonds, thus raising the dependence of counties and localities.<sup>29</sup>

Hence, South Korea, in terms of its industrial development policy at least, can de facto be regarded as a highly **centralised** country, where, in contrast to the EU's internal differences, local deviations rarely occur and policies can be more easily generalised as common to the whole territory.

Consequently, one can not only say that South Korea has already learned to a high degree from a 'Japan Model' of developmental state and mercantilism<sup>30</sup> during the period of occupation until 1945, but also that post-WWII military dictatorships<sup>31</sup> further exploited the historically strong authoritarianism and Confucian deference<sup>32</sup> to impose top-down industrial development priorities<sup>33</sup>.

In spite of considerable USA-aid earlier on, these initial industrial policies were hardly successful in South Korea in terms of GDP growth. Only since the 1960s, the introduction of **Five-Year Plans** and strong leadership under the military government of President Park brought economic advance. He likewise turned commercial banks into de facto public enterprises by legally limiting private voting rights.

Thus the share of **public sector investment** climbed to about 35 percent over the period from 1963 to 1979.<sup>34</sup> The government's most visible instrument formed public enterprises, of which the value added during 1963 and 1977 increased at an annual rate of 10 percent. But the Koreans remained flexible and pragmatic leading to high input-output interdependence. This adjustment is equally reflected in downward trends in allocations, as the need for direct government investment decreased in some sectors.

Korea needed an **outward-looking strategy** in view of its poverty in natural resources and small domestic market. Thus government initiatives aimed at growth through export of labour intensive products.

Interestingly, different from the Japanese, the Koreans actively encouraged the inflow of foreign capital in order to supplement the shortage of domestic savings.

Thanks to this policy, the country's real GDP expanded by an average of more than 8.7 percent per year from 1960 to 1989, while GDP per hour worked more than tripled. In the early 1980s, government intervention in the economy was greatly reduced<sup>35</sup> and liberalised to promote competition. This helped to achieve even double-digit growth towards the end of the decade. However, in 1997 the **Asian Financial Crises** hit Korea hardest, but the Korean government could contain problems with a loan by the IMF, which partly resulted from the legacies of thirty years of government-led growth and close collusion with big business.<sup>36</sup>

Government plans were mainly implemented through selective subsidisation of chosen **chaebol**, the fast growing family enterprise-groups modelled after the Japanese *zaibatsu*, but without internal banks. The ties between the political leadership and the conglomerates was more symbiotic than in 'Japan Inc.'<sup>37</sup> The *chaebol* often engaged in projects in risk sharing with the administration. Unwarranted heavy-handed government action and support of non-viable institutions by the administration only worsened the credibility of Korea abroad, leading to foreign capital flight.

The tough **reforms**, introduced towards more economic freedom<sup>38</sup> and strengthening the market, in addition to stricter prudential regulation of banks in the aftermath of the crisis, have allowed the Korean economy to swiftly bounce back to a fast recovery. Since 1997, a regulatory quality system has also been developed and consolidated and the commitment to a 'participatory society' has promoted more transparency in the regime of rules. These days, the Internet is increasingly used to reduce administrative burdens. The emphasis has shifted from quantitative reduction of the overall stock of regulations towards further promotion of regulatory quality.<sup>39</sup> Likewise, the need of innovative entrepreneurship in SMEs has increasingly found recognition in the Korean administration, gradually reversing some of the pro-big business policies and thus opening up chances for newcomers, including from Europe. EU and Member States' policies in favour of SMEs can serve as examples here.<sup>40</sup>

The main aim of the introduction of **competition policy**<sup>41</sup> into the Korean economic system has been to deal with the evolving monopolistic industry structure of *chaebol*. Therefore, in 1981 the Korean government decided to strengthen the market through a competition law, namely the Monopoly Regulation and Fair Trade Act. Current Korean competition policies have sought to curb the activities of the conglomerates and overhaul corporate governance, now often in favour of SMEs.

### 3.3. CURRENT SITUATION IN KOREA

Since the late 1990s, Korea's industrial growth is increasingly fuelled by the information technology sector based on production of semiconductors and telecommunications equipment. The construction industry has also been aiding economic growth. Today, Korea is a global leader in high technologies, especially in the areas of mobile phones and thin-film transistor liquid crystal displays. Its heavy industries such as car, steel and shipbuilding also have won worldwide recognition.<sup>42</sup>

In these sectors, the big *chaebol* are now globalising<sup>43</sup> and their dominance is coming under stricter political scrutiny at home. At the same time, as austerity obligations limit government finances, it has become more difficult to enforce interventionist industrial policies. Nevertheless, the government's share in total R&D expenditures increased to 26 percent in 2003, in particular in the sector of semi-conductors, which amounts to over ten percent of Korean exports.<sup>44</sup>

Furthermore, like in the EU and even the USA, the importance of **small and medium-sized enterprises** in Korea has clearly grown over the last years, accounting for 99.9% of all enterprises and 88.4% of all employees. They also contribute 50.8% of value added in manufacturing.<sup>45</sup> Hence, the Small & medium Business Corporation (SBC) functions as a powerful non-profit, government-funded organisation and provides financing for SMEs, also to enhance their global competitiveness along with KOTRA, the Korea Trade-Investment Promotion Agency.

Korea's first ever 'National **Green Growth Strategy**' of the 2009 Five-Year Plan investing annually 2 percent of GDP for a low-carbon economy is leading internationally in the field and already delivers impressive results.<sup>46</sup> Korea's renewable energy sector has grown six fold over the past three years. In addition, a low rate of the Korean currency helps to maintain economic growth and exports at the highest levels among OECD countries. In particular in the field of big nuclear plants, the success-stories in 'policy-guided' exports of Korean companies are impressive. In spite of the accidents in Japan, South Korea plans to export 80 such installations by 2030.

The OECD conducted two major Reviews of **Regulatory Reform** in Korea, in 2000 and 2007, as reforms are now moving Korea from a highly interventionist and authoritarian model of economic development to a market- oriented and open model based more on values of consumer choice, democracy, and the rule of law. However, the web of government intervention has only been partly reformed, and many important issues are still to be tackled.

The global economic crisis since 2008 gave a renewed impetus to implementing reform activities within Korea. The government introduced a new type of institution with the Temporary Regulatory Relief (TRR) and Regulatory Reform for New Growth Engine Industries. The TRR can waive or mitigate the implementation of some burdensome regulations for a certain period of time, thus increasing investment in new business and reducing burdens for SMEs. In addition, the rental rate applied to leasing governmental properties for small business will be reduced from 5% to 3 %. This waiver has considerably contributed to the enhancement of business investment and employment level.

The Regulatory Reform for New Growth Engine Industries also cleared off various stumbling blocks that hinder the development of future growth industries such as new and renewable energy, tourism and green technology.

In 2009, with the adoption of the Regulatory Information System (RIS), an on-line system was introduced that covers the entire process of regulatory reform, ranging from regulatory review to registration, reform task management and access to regulatory information. The new system provides a service monitoring the current status of each ministry's regulatory reform process.

The Korean government has also expanded the Sunset Clause legislation since 2009. Now about 20% of the existing regulation<sup>47</sup> is to be reviewed on a regular basis.<sup>48</sup>

#### 4. EU-KOREA COOPERATION BASED ON AGREEMENTS

Better mutually understanding these areas of industrial development could open up highly beneficial cooperation for the EU as well as for Korea.

Apart from bilateral agreements and the multilateral institutions of the UN etc., also in the context of the interregional **Asia-Europe Meeting** (ASEM) process, there are first regulatory cooperation projects, in particular for SMEs. For instance, in the follow-up of the ASEM Forum 2010 on Green Growth the so-called ASEM SMEs Eco-Innovation Centre was established in Seoul.<sup>49</sup>

Both, the EU as well as South Korea, originally showed little desire for bilateral trade agreements and gave clear preference to the multilateral negotiations of the WTO during the period of Pascal Lamy as Commissioner of Trade in the EU.<sup>50</sup> The recognition that bilateral FTAs rather privilege multinational big businesses over less internationalised SMEs also has supported this policy. However, the lack of progress in the Doha Round changed perceptions not only in Europe, but also in Korea.<sup>51</sup>

Between the EU and Korea, regulatory issues are important as seen in the main two bilateral agreements signed in 2010. The EU-Korea **Framework Agreement** forms an overarching political cooperation agreement with a legal link to the FTA. It *expressis verbis* proposes cooperation on regulation in a wide range of sectors of various services, data protection, food safety, drugs to competition law and protection against terrorism, but hardly goes into details regarding their actual implementation.

Clearly more concrete in terms of regulatory cooperation is the Korea-EU **Free Trade Agreement (FTA)**, which has been provisionally applied since July 2011 while the process of ratification in Member States continues. In the context of regulatory provisions the FTA's Chapter 12 on **Transparency** is of particular importance, as it obliges both sides to pursue an efficient and predictable regulatory environment for economic operators, especially small ones.

Chapter 10, dealing with **Intellectual Property Rights** (IPR), goes farther than the obligations under the WTO and its TRIPS Agreement. The provisions on Geographical Indications carry particular interest for EU business, notably in the food sector. But the sub-section on Trademarks is also still meaningful for the EU in view of continuing problems with counterfeits in Korea, although now "Korea is rich, so it can no longer grow fast by copying others"<sup>52</sup>.

A particularly delicate issue is the European Commission's recent inquiry into Samsung's alleged withholding of "industry standard essential patent rights" and thereby breaching EU competition law.<sup>53</sup>

Another major field of cooperation on economic regulation specifically dealt with in the FTA relates namely to **competition policy**. In Chapter 11 of the FTA, both sides recognise the importance of free and

undistorted competition<sup>54</sup> in their trade relations. Beyond this agreement on basic concepts of competition policy, the FTA remains rather weak in its implementation, since both sides are willing to exchange only upon request and only public information concerning competition law enforcement activities and legislation. Equally limiting appears their denial to apply the general Dispute Settlement System of the FTA to competition law cases.

The detailed **Dispute Settlement System** namely, which they introduced in the FTA itself, otherwise is of importance to the entire regulatory cooperation between Korea and the EU. Besides the general provisions in Chapter 14, under almost each and potentially problematic issue and sector treated in the FTA, specific rules were worked out to lead to solution of conflicts by entering into consultations in good faith with the aim of reaching a mutually agreed solution.

Throughout the 1426 pages of the FTA, there are numerous proposals of detailed regulatory cooperation in specific sectors. Not all cases can be treated in this limited paper, but the following important cases should serve as an example how such cooperation could find concrete form.

- a) In Chapter Four of the FTA, the regulation of **Technical Barriers to Trade** (TBTs) are mentioned for cases of cooperation in the framework of both sides' rights and obligations under the TBT Agreement of the WTO. For "joint cooperation" in the field of standards, technical regulations and conformity assessment procedures the EU and Korea "may establish regulatory dialogues" in order to increase the mutual understanding of their respective systems. More concretely, it is proposed to identify, develop and promote trade-facilitating initiatives such as the exchange of information, experiences and data and scientific and technical cooperation with a view to improving the quality and level of their technical regulations.
- b) In terms of trade involved and politically the most sensitive sector for the EU proved to be the **car industry** in Annex 2-c of the FTA as demonstrated already during the negotiations of the FTA and in last-minute delays of the ratification of the FTA in the European Parliament. Five of the twenty-one market access issues of the EU with Korea relate to the automotive sector<sup>55</sup>. The benefits for EU producers of automobiles and their parts in the FTA are in the provisions under which Korea accepts the equivalence of motor vehicles produced to EU specifications or Global Technical Regulations within a period of five years of the entry into force of the FTA. In practice, Korea is accepting international standards (UN-ECE) or EU standards. Both sides commit to ensure that their respective procedures are accomplished without undue delay for the marketing of automobiles and parts. Some observers go as far as expecting the possibility of a five times rise of EU exports of cars to Korea,<sup>56</sup> as both sides commit to harmonise their regulations.
- c) **Electronics**, in Annex 2-B of the FTA, likewise provide an important industrial sector with concrete proposals for regulatory cooperation. Besides consulting each other on the development of international standards in multilateral bodies like the ISO, IEC and ITU with a view to establishing common approaches, bilaterally conformity assessment procedures shall not have the effect of creating unnecessary obstacles to trade with the other side. Regulation in electronics shall follow the shared

objectives and principles of i.a. gradually aligning their domestic regulations with existing international standards and implementing appropriate regulatory and legal enforcement mechanisms as to product liability and market surveillance.

- d) Another example of regulatory cooperation is the **Cooperation on Trade and Sustainable Development** as detailed in Annex 13 of the FTA. Both sides commit with an indicative list of areas of cooperation i.a. to set up an “exchange of views on the trade impact of environmental regulations, norms and standards”.
- e) In view of the fact that by the end of 2012 a formal regulatory dialogue has not yet been established between the EU and Korea other than in the so-called Working Groups under the FTA, it is useful to shed some light on the ongoing dialogue of the EU with Japan. This dialogue resulted originally from discussions at an EU-Japan Summit in 1994. Such exchanges are expected to take up extra momentum with the start of the negotiations of an FTA between the two sides in 2013.

The first meetings of the **EU-Japan Regulatory Reform Dialogue** took place in Tokyo in 1994 and covered in particular areas of retail distribution, competition policy, sanitary and issues, financial services, public procurement, customs, transport and telecommunications. The EU requested to expand these rather ad hoc meetings with a view to longer-term dialogues.

The Japanese administration then added 279 items for its list for deregulation or rather ‘relaxation’ of regulation (*kisei kanwa* in Japanese<sup>57</sup>). This so-called Deregulation Action Programme was to be implemented over three years with annual reviews. At the same time, the EU accepted reciprocity in deregulation, i.e. also accordingly action in EU-Member States upon request by Japan.

The 2001 Action Plan for EU-Japan Cooperation strengthened the mandate towards cooperation between the competent authorities in a variety of areas ranging from standards to conformity assessment in various sectors, notably telecommunications, environment, energy, transport services and construction. It added the intention to follow a consistent regulatory approach of Japan and the EU in the future”.

- f) In general, throughout all the sectors proposed for regulatory dialogue and cooperation between not only Korea and the EU, but likewise with any other trading partner, however, there are *in praxi* two major **obstacles** that often prevent fruitful cooperation of such sort to take place. The more important the bilateral trade is in value, the easier it is, of course, politically and institutionally to overcome these obstacles.

One obstacle is usually the absence of **sufficient staff and/or budgetary means** in DGs/Ministries and internal bureaucratic wrangling to take on the task of organising and providing the necessary content for such cooperation exchanges, especially for more horizontal cooperation like on TBTs.

In order to provide a concrete example of such **intra-bureaucratic conflict** within the European Commission, the case of an ‘Internal Working Document – Outline, Commission Communication “Shaping Globalisation with International Regulatory Cooperation”’ is illustrative. Drafting the document while the text of the Korea-EU FTA was already initialed by both sides’ negotiators (i.e. by another Directorate-General) did not



prevent the responsible official (of a different Directorate-General) not only to ignore the cooperation proposals of that text, but even not to mention at all this possible regulatory cooperation in the future. The document outlined that regulatory issues are addressed in many ways internationally. At a multilateral level, the WTO/TBT Agreement provides certain tools, as do sectoral agreements in global fora such as UN-ECE, OECD, GHTF, etc. Bilaterally, trade and cooperation agreements (like "FTAs"), mutual recognition agreements ("MRAs"), and agreements to extend the internal market to neighbouring countries (so called "PECAs" and "ACAAs") help support regulatory harmonization. The document listed the 'major trading partners' with which the Directorate-General at the time conducted bilateral regulatory dialogues, including the USA, China, Japan and Russia. "As globalization increases further, these efforts are likely to increase over time" was the concluding perspective of the Directorate-General.

With only limited practical experience in Korea as a Research Fellow in the autumn of 2011, the author can only point out the more homogenous and big-business dominated scene in the country that renders the established bureaucratic channels of communication and decision-making in the country much smoother and less transparent than in multi-cultural Europe. Common denominators can be identified much more easily and faster in a single nation-state like Korea with only one language and tradition.

This is likewise true concerning the second obstacle for fruitful bilateral cooperation, namely cases of involvement of specific sectors of industry, where in Europe often the problem lies in the difficulty how best to bring to bear and balance the (vested) **interests of industries** concerned and other stakeholders. This has to be achieved in an equitable fashion that allows both sides to agree on an acceptable solution/compromise that at the same time respects also the common good in the public interest.

The difficulties in this context involve a long list of issues starting from the basic problems of transparency and accountability of lobbying with its only voluntary register in the EU. The political issues of lobbying, however, are not unique to the EU system of governance, but in a similar fashion concern single nation-states like the EU members and Korea. Nevertheless, in addition to its supra-nationality one particularity of the EU democratic system in comparison to Korea stands out and needs to be mentioned here, namely the often as 'democratic deficit' criticised monopoly of the executive branch (i.e. Commission) to propose legislation. This monopoly is still justified in view of the Commission being the only institution representing the EU interest as a whole, whilst European Parliament and Council rather mostly still serve national and even subnational interests. This fact gives the Commission particular powers in rule-making in the EU.

In addition, there is a de-facto dominance by the Commission and at the same time absence of the European Parliament<sup>58</sup> in the little understood process of so-called 'Comitology' that decides the bulk of implementing rules of EU legislation. The relevant Interinstitutional Agreements after the Lisbon Treaty sought among the Commission, the Council and the Parliament reflect the strong position of the executive in the EU system, which often is further strengthened by its expert capacity that is in particular missing on the side of the Parliament.

In this context of 'Comitology' and in relation to Korea, it is noteworthy that the EU recognizes as equivalent to Member States' auditor public oversight the system of South Korea and vice versa, which is not yet

the case with the USA.

## 5. GLOBAL CONTEXTS OF EU-KOREA RELATIONS

The EU --beyond the continuing task of integrating its now 27 Member States into a Union-- is closely linked to its neighbourhood of the EFTA, to the Mediterranean Union through EUROMED, to the Eastern Partnership and through the Transatlantic Council to the USA.

South Korea on a peninsula on the other side of the Eurasian continent is still under the tensions of the Cold War and occasionally hot conflicts with the DPRK, in spite of the Six-Party-Talks involving also its neighbours China, Russia and Japan as well as the USA.

### 5.1. KOREA-USA RELATIONS

President Obama of the USA recently announced to give a higher priority to Asia as a whole in view of the growing importance of the continent in the world economy as well as geopolitically. The initiative for a **Trans-Pacific Partnership** (TPP) underlines this intention by the Americans to shift more attention to Asia. Of course, South Korea is still stuck in the tensions of the Cold War, which has become history of the past for Europeans. In particular for reasons of security policy, South Korea remains militarily bound to the USA with **American troops** still very much present in the country. But also in terms of trade the relations with the USA have exerted and continue to maintain at present a high influence on Korean policies.

Not only for the Americans, Korea was known for a long time as "one of the toughest places to do business." The legacy of decades of Korean government promotion of manufacture and exports, an anti-import bias amongst the general consumers and "frugality campaigns" have lingered in the public mind and in many government regulations and practices.<sup>59</sup>

That is why in the mid-1990s in view of a continuing decline in bilateral trade following the peak back in 1986, the US administration chose Korea as a test case and entered into a Dialogue for Economic Cooperation (DEC). In parallel to the traditional **bilateral market-access talks**, the DEC was established in order to advance reform in the country, especially to allow better access for foreign investment in Korea. In the same vein, a dialogue with the Korean Fair Trade Commission was to improve government policies and regulation in order to ensure the promotion of fair competition and opening of the market to newcomers. For the Americans the one-year DEC was only a modest success in view of their high expectations at the time towards economic liberalisation in Korea. They summed up their frustrations by stating that Korea's non-tariff trade barriers are often compared to those of Japan ten years ago.<sup>60</sup>

Since its peak in the mid-1980s at 31 percent, the share of the USA in total Korean trade has continually declined to only 9 percent in 2011 with Korea enjoying a surplus for the entire last decade. But at the same time, a vibrant Korean economy managed to avoid the middle-income trap<sup>61</sup> and grew twice as fast as the OECD

average. After the Asian Financial Crisis it had resumed its rise to close up with the living standards of the rich countries like Japan and the West.

These trends were reason enough for both sides' Presidents already in 2005 to confirm their willingness to explore the possibility of a **USA-Korea FTA**. In direct reaction to the politicians' announcement of beginning FTA talks, several anti-FTA organisations in Korea became popular with vested interests, particularly in domestic agriculture, and started vehemently to take their opposition also to the streets of Seoul. Nevertheless, after eight rounds of formal negotiations and other exchanges in 2009 the Korean and USA negotiators reached a first agreement on a text for an FTA. However, subsequent American requests for amendments<sup>62</sup> and even a restart of discussions as well as last-minute wrangling in Parliament in Seoul postponed the ratification of the so-called "KORUS" until November 2011. Finally, "KORUS" came into force on 15 March 2012, more than nine months after the provisional implementation of the "KOREU" started with the EU, first negotiations of which began not until 2007.

## **5.2. KOREAN RELATIONS WITH CHINA AND JAPAN**

While its FTAs with the EU and with the USA now have advanced to the process of parliamentary ratification and went into effect respectively, Korea had started work on an FTA with **Japan** already in 2004. But the two Asian governments had suspended such talks, and now Seoul will resume free trade negotiations with Japan only towards the end of 2012.

Bilateral talks on an FTA with **China** likewise had been put on the back-burner since first foundations for it were laid in 2005. Similarly, these two continental Asian countries consider resuming the negotiations during the next half a year in 2012.

Aside from bilateral trade links, China seems to be willing now to engage further even with both Korea and Japan as shown in May 2012 at their **trilateral** summit meeting with their joint declaration proposing to begin work on a China-Japan-Korea FTA and an investment agreement still within this year 2012.

## **6. FUTURE POTENTIAL OF EU-KOREA REGULATORY COOPERATION**

During the month of July 2011, the initial month of the provisional FTA enforcement, for the first time in a decade the EU achieved a trade surplus with Korea, since European exports temporarily had jumped unexpectedly.<sup>63</sup> In view of Korea's sensitivity as a nation depending for 43 percent of its GDP on exports, the European Commission played down its short-lived success-story with the FTA as a bubble of held back deliveries to Korea.

The **actual implementation of the FTA** on both sides and the consequent exploitation by business of the liberalisation of bilateral trade will take years, but the expected potential is slowly being realised by economic operators, including through the awareness of the gradually opening up of the legal system in Korea. In particular, European traders --even after months of the FTA in force--have not yet sufficiently realised the possibilities of becoming an 'approved exporter'. Furthermore, problems still remain with the protocol on the Rules of Origin.<sup>64</sup>

The elimination of 98 percent of customs duties on goods over seven years and liberalising several services sectors, however, clearly provide new chances for European business in Korea. Notably, the services sector will open up important opportunities to Europeans, because its productivity in Korea is only two-thirds that in manufacture, the largest gap amongst OECD countries.<sup>65</sup>

While for example some departments in the European Commission so far have remained reluctant to put South Korea on the list of strategist partners and for starting regulatory dialogues, it can be assumed that such attitudes will change rather fast towards a consensus in the business and political world as well as in national and EU bureaucracies in order to attach more attention to Korea in the near future. Regulatory cooperation seems to be most promising in the services sector where regulatory loopholes remain wide and multilateral supervision absent.<sup>66</sup>

Korea's main competitor for attention in the EU, **Japan**, will continue to remain under stress not only for reasons of adversary natural forces for years to come. Japan seems to remain politically inept to regain internationally the image of dynamism, which it enjoyed worldwide until the bubble's blast in the 1990s. A debate in the EU Council in early June 2012 on relations with the island nation led to postponing the date to give the Commission a mandate (after the 'scoping exercise') to start the work for entering into negotiations of an "Economic Partnership Agreement with Japan." It showed the difficulties the EU continues to have in communicating with Japan. Notably, vested interests in automobiles and railways and the general perception of Nippon's NTBs block any advances towards a bilateral agreement on trade. The Regulatory Reform Dialogue of the EU with its fifth largest trading partner still needs to gain from discussions with Japan over a wide range of sectors. But the difficulties of attaining changes in the Japanese regime of NTBs caused mainly by domestic vested interests under the self-diagnosed 'Galapagos Syndrome' hardly breed optimism. Nippon's insular mentality and continued weak international communication capacity -- exemplified lately by the Fukushima accident's consequences<sup>67</sup>-- do not feed mutual trust either.

**China** also has a 'trust gap' with the EU<sup>68</sup>. But now as the world's second biggest economy (discounting the EU/Euro-zone as one single economy) certainly more assertive and traditionally more communicative, it is fully accepted by the EU as its second largest trading partner. This includes regular dialogues on industrial policy topics of technical regulations, market access etc. Unlike fully regulated Japan, China particularly since its entry into the WTO is still newly setting up its legal regulations in many fields ("rule by law") --including a basic Competition Law-- which the EU wants to influence from the very beginning. This renders the regulatory dialogues with China particularly important for the EU as the global soft power in industrial standardisation and regulation.

The comparison with China and Japan shows clearly the chances of Korea as the pro-active third player in-between the two Asian giants. Korea can best serve as an international hub in East Asia that is closer to western mentality with 30 percent of its population being Christians and that has become a trusted partner in long and successful negotiations with the USA and with the EU. Not only for the USA, its FTA with Korea is perceived as a test case. Without 'KORUS' and 'KOREU' becoming long-term success stories, however, neither the USA nor the EU will find it easy to conclude negotiations of bilateral FTAs with Japan or China.

## 7. CONCLUSION

A comparison of industrial development policies in the EU and South Korea cannot hide the striking difference of the originally great variety of market economy models within the integrating Europe on the one hand and on the other hand the most homogenous economy of 'Korea Inc.' Of course, we compare here a nation-state economy ("a shrimp") on a peninsula pressed between the second and third biggest national economies ("two whales") of the world with a partly already supra-national group of 27 Member States of a unifying market economy in progress. Notwithstanding the diverging origins in geography, history and culture, the potential for regulatory cooperation in EU-Korea relations is significant. Common denominators in the legal infrastructure mainly based on continental concepts of law facilitated already the negotiations and now the implementation of the bilateral Free Trade Agreement of 2011. Its provisions give clear directions for priority sectors as well as the procedures to follow to better promote regulatory cooperation. Austerity policies and resulting budget restrictions due to the financial crisis, notably in the EU, as well as intra-bureaucracy wrangling in the relevant administrations might pose obstacles. But the overwhelming interest in such cooperation by business involved, additionally stimulated on the EU side by the jump in exports to Korea since the FTA, should nudge also officialdom on both sides towards action.

A first recommendation for better mutual information ought to be addressed to the mass media in Korea as well as in the EU. The limited understanding of the EU by the general public and thereby also small business in South Korea is to a high degree due to the one-sided focus of any international reporting over the Pacific Ocean rather than over the Eurasian continent. Even the insular Japanese media carry more information about Europe than their Korean competitors. Also European media have room and now with the exemplary FTA in place more than ever reason to identify and better inform about Korea.

A second recommendation is directed towards European businesses to recognise the role that Korea can play as a gateway to the huge Asian markets, in particular China and Japan. This potential will only grow with further FTAs the EU will launch with Korea's neighbours.

Thirdly it is recommended that European industrial associations and lobbies open their membership to Korean representatives, as most recently done by the European Automobile Manufacturers Association through admitting Hyundai as a member. Such openness can greatly improve the flow of information in both directions. Finally, more directly aimed at enhancing regulatory cooperation is the recommendation to start a regular Regulatory Reform Dialogue between the relevant Directorates General of the European Commission and the Korean Ministries and agencies involved. Such dialogues are ongoing with Japan already since 1994 and other trade partners more recently. With the EU-Korean FTA now being implemented the launch of formal bilateral exchanges on regulatory issues is urgent in order to fully exploit the opportunities of the FTA.

## Endnotes

<sup>1</sup> Philippe Aghion, Julian Boulanger and Elie Cohen, Rethinking Industrial Policy, Bruegel Policy Brief, Brussels, Issue 2011/04, June 2011

<sup>2</sup> sic Neelie Kroes, then EU Commissioner in charge of Competition Policy, in a speech on Industrial policy and competition law & policy, 14.9.2006 in New York

<sup>3</sup> The Financial Times (FT) in its monthly series on regulation (FTfm, 16.1.2012, p.10) points out the changes over the last years since Asia was seen as a "regulation-free zone" and now in 2012 when "Asian rules provide tough blueprint for Europe" in terms of financial regulation.

In this context, see also Wolfgang Pape, *Asian economic unity likely a model for Europe*, Shanghai Daily, 8.11.2011

<sup>4</sup> World Bank, Concept Note for 2011 ECA Flagship Report, Golden Growth – Restoring the Lustre of the European Economic Model, 2011

<sup>5</sup> cf. Peter A. Hall and David Soskice, *Varieties of Capitalism – The Institutional Foundations of Comparative Advantage*, Oxford 2001, p.1

<sup>6</sup> sic Colin Crouch, *Typologies of Capitalism*, in: *Debating Varieties of Capitalism, A Reader*, UK, 2009, p.77

<sup>7</sup> e.g. Andre Sapir, *Globalisation and the Reform of European Social Models*, ECOFIN meeting, Manchester, 9.9.2005

<sup>8</sup> sic Gosta Esping-Anderson, *The Three Worlds of Welfare Capitalism*, New Jersey. 1990

<sup>9</sup> cf. Max Weber, *Protestantische Ethik und der Geist des Kapitalismus*, 1905

<sup>10</sup> The Economist, *Desperately seeking a perfect model*, 10.4.1999, p. 67-69

<sup>11</sup> Michel Albert, *Capitalism contre capitalism*, Paris, 1991

<sup>12</sup> sic Peter A. Hall and David Soskice, *Varieties of Capitalism – The Institutional Foundations of Comparative Advantage*, Oxford 2001, p. 5, also emphasising that "firms are not essentially similar across nations", eodem p.56

<sup>13</sup> see Peter Evans, *Embedded Autonomy - States & Industrial Transformation*, Princeton, 1995, p. 126

<sup>14</sup> see Peter A. Hall and David Soskice, *Varieties of Capitalism – The Institutional Foundations of Comparative Advantage*, Oxford 2001, p.469

<sup>15</sup> COM(2010) 614

<sup>16</sup> German Chancellor Angela Merkel in an interview with the Financial Times 11.6.2011 went as far as saying that for financial markets *laissez faire* capitalism and "the Anglo-Saxon model of deregulation has failed."

<sup>17</sup> EU regulation, A rule making spring for finance, Financial Times, 30.5.2012, p.9

<sup>18</sup> cf. COM(2010) 614, p.9

<sup>19</sup> For details on the impact of NTBs on trade see Ceine Carrere and Jaime de Melo, *Non-Tariff Measures: What Do We Know, What Might Be Done*, Journal of Economic Integration, Seoul, March 2011, p.136-168

<sup>20</sup> see [http://ec.europa.eu/enterprise/policies/sme/market-access/internationalisation/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/market-access/internationalisation/index_en.htm) (accessed on 30.5.2012)

<sup>21</sup> see <http://ec.europa.eu/enterprise/policies/sme/small-business-act/> (accessed on 30.5.2012)

<sup>22</sup> see the Stoiber Report at [http://ec.europa.eu/dgs/secretariat\\_general/admin\\_burden/best\\_practice\\_report/best\\_practice\\_report\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/admin_burden/best_practice_report/best_practice_report_en.htm) (accessed on 30.5.2012)

<sup>23</sup> The OECD has carried out detailed assessments of countries' progress in implementing regulatory reform since 1997, including in the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Spain, United Kingdom and also Korea etc.

<sup>24</sup> see Daniel Guegen, *Comitology - Hijacking European Power?* Brussels, 2010

<sup>25</sup> The invention of the common Korean script 'Hangul' in the 15<sup>th</sup> century, completely distinct from the Chinese and Japanese writing systems, has essentially contributed to the national identity and homogeneity of the Korean culture, see Gerhard Hielscher, *38mal Korea*, Muenchen 1988, p. 95

<sup>26</sup> A Handbook of Korea, Korean Overseas Information Service, Ninth Edition, Seoul, 1993, p. 270

<sup>27</sup> Il Sakong, *Korea in the World Economy*, Institute for International Economics, Washington D.C., 1993, p.1

<sup>28</sup> It is assumed here that only the Republic of Korea in the South is seen as a partner for cooperation with the EU, not the DPRK.

<sup>29</sup> For details see Local Autonomy, in: Infomag, Monthly Magazine of the European Business Community in Korea, No.112, September 2010, p.68-79

<sup>30</sup> On the 'developmental state' see Chalmers Johnson who at the time of writing of his seminal work on Nippon's industrial policy at the turn to the 1980s (MITI and the Japanese Miracle, The Growth of Industrial Policy, 1925-1975, Stanford

- University Press, California, 1982) wanted to see Korea to an extent distinguished from then more democratically advanced Japanese model, because the Korean system showed more "bureaucratic-authoritarian characteristics" (see eodem, p.317).
- <sup>31</sup> Max Eli (in: Werner Draguhn ed., *Neue Industriekulturen im pazifischen Asien*, Hamburg 1993, p. 176) distinguishes Korea as "Entwicklungsdiktatur" until 1991 from the Japanese model of development.
- <sup>32</sup> Jung Suk Seo, Transformation of Political Culture in the Republic of Korea, Dissertation presented to University of Santo Tomas, 1992, p. 106
- <sup>33</sup> Since the 18<sup>th</sup> century, Christian missionary –at the beginning via China– have been active in Korea. Nowadays about 1/3 of the population adheres to a Christian belief, with a particularly strong increase in the number of Protestants after WWII; see A Handbook of Korea, Korean Overseas Information Service, Ninth Edition, Seoul, 1993, p. 142; on the similarities of Christian and Confucian values conducive to economic growth, see Sung Chul Yang, The North and South Korean Political Systems, Seoul, 1994, p. 479
- <sup>34</sup> Il Sakong, Korea in the World Economy, Institute for International Economics, Washington D.C., 1993, p.27
- <sup>35</sup> Presidential Commission on Economic Restructuring, Realigning Korea's National Priorities for Economic Advance, Seoul, 1988, p.48
- <sup>36</sup> Bouncing Back, in: Infomag, Monthly Magazine of the European Business Community in Korea, No.100, September 2009, p.70-79
- <sup>37</sup> see Peter Evans, Embedded Autonomy - States & Industrial Transformation, Princeton, 1995, p. 53
- <sup>38</sup> As for the economy-wide distribution of entry regulations over the two observation years of 1992 and 2001, the number of sectors under entry regulation decreased from 545 down to 427. The share of sectors with entry regulation (by the number of sectors) declined substantially, from 45.3% to 35.7% (for details see MoonJoong Tcha, Regulatory Reform to Improve Business Environment in Korea, Korea Development Institute, Seoul, 2006, p. 14).
- <sup>39</sup> Infomag, Monthly Magazine of the European Business Community in Korea, No.100, September 2009, p.76
- <sup>40</sup> At a conference entitled "In a Crossroad where Korea Meets the EU, Making New Industrial and SME Policy Cooperation between Korea and the EU", 2009, Seoul, Wolfgang Pape presented "SME Policies of the EU" and pointed out differences (e.g. definitions of SMEs in Korea depending sector of business) as well as similarities (e.g. focus on innovation) that lend to better cooperation.
- <sup>41</sup> For a better understanding of socio-cultural background it has to be noted that in the Sino-Asian countries, to which Korea historically belongs, the central term 'competition' as translated into two Chinese characters only late in the 19<sup>th</sup> century connotes rather a confrontational conflict. In the contrary, in our western understanding of competition or French *concurrence*, the Latin etymology of striving or running together is much more associated with sports and fair play than its meaning in Chinese, Japanese or Korean (for details see Wolfgang Pape, Socio-cultural Differences in International Competition Law, European Law Journal, Volume 5, Issue 4, December 1999, p. 448, in the same line of interpretation for Korea see Kyu Uck Lee, The Evolution of Competition Policy in Korea: A Retrospective, Korea Development Institute, Seoul, 1991, p. 18).
- <sup>42</sup> Ko Jeong Min, From Apparels to Chips: Korea's 20-year Industrial Development, KET Issue Report, Samsung Economic Research Institute, Seoul, 2006, p. 1
- <sup>43</sup> Samsung alone now accounts for 20 percent of Korean exports according to the FT, 19.12.2012, Special Report, p. 3. See also FT (1.2.2012) reporting that Korea's opposition party is complaining that the economy had become a "chaebol monopoly".
- <sup>44</sup> see Industrial policy and economic development: Korea's experience, Journal of Economic Issues, 1.3.2007, p.2
- <sup>45</sup> <http://www.sbc.or.kr/sbc/eng/smes/economic.jsp> (accessed on 31.5.2012)
- <sup>46</sup> see details at <http://www.greengrowth.go.kr/english/> (accessed on 31.5.2012)
- <sup>47</sup> This trend follows the pattern of 'competitive deregulation' to counter the challenges of globalisation, cf. Peter A. Hall and David Soskice, Varieties of Capitalism – The Institutional Foundations of Comparative Advantage, Oxford 2001, p. 55.
- <sup>48</sup> see for the OECD Reviews [http://www.oecd.org/document/30/0,3746,en\\_2649\\_37421\\_50065318\\_1\\_1\\_1\\_37421,00.html](http://www.oecd.org/document/30/0,3746,en_2649_37421_50065318_1_1_1_37421,00.html) (accessed on 31.5.2012)
- <sup>49</sup> see [www.aseic.org](http://www.aseic.org) (accessed on 31.5.2012)
- <sup>50</sup> sic also explaining the new concept of Global Europe with more focus on Asia, Justyna Lasik, Policy coordinator, European Commission, DG Trade, at Conference on Korea-EU Economic and Political Cooperation, Leuven, 31.1.2012
- <sup>51</sup> Infomag, Monthly Magazine of the European Business Community in Korea, No.123, August 2011, p. 31-33
- <sup>52</sup> sic the conclusion of The Economist (Exams in South Korea, The one-shot society, 17.12.2011, p. 107) in an analysis of Korea's school entry exams system
- <sup>53</sup> See FT, 1.2.2012, Samsung lawsuits prompt patent probe by Brussels
- <sup>54</sup> In the Korean language, the term 'competition' derived from Chinese includes originally the character of rivalry rather than the European understanding of togetherness (Latin 'com/con-', cf. also French 'concurrence'); for details see Wolfgang Pape, Socio-Cultural Differences and International Competition Law, in: European Law Journal, Vol.5, Issue 4, Blackwell Publ. Oxford, December 1999, p.438-460, in particular 448-451
- <sup>55</sup> See List of Market Access Issues by the European Commission of 1.6.2011
- <sup>56</sup> Sic Ericson and Lee-Makiyama, Stepping into Asia's Growth Market: Dispelling Myths about the EU-Korea Free Trade Agreement, ECIPE Policy Briefs, Brussels, No. 03/201

<sup>57</sup> For details of past Japanese deregulation and the EU see Wolfgang Pape "*Nichttarifäre Handelshemmnisse in Japan*" in *Recht der Internationalen Wirtschaft*, September 1990, p.726-734, an update to be published in early 2013 by the EU-Japan Centre for Industrial Cooperation, Tokyo.

<sup>58</sup> See *European Voice*, 12.4.2012, p.19; Daniel Gueguen, *Comitology – Hijacking European Power?* Europolitics & ETI, Brussels, 2010; Gijs Jan Brandsma, *Backstage Europe – Comitology, accountability and democracy in the European Union*, Utrecht 2011

<sup>59</sup> See C. Fred Bergsten ed., *Korea-United States Cooperation in the New World Order*, Institute for International Economics, Washington D.C., 1996, p. 63

<sup>60</sup> eodem, p.119

<sup>61</sup> Alan Wheatley, *Avoiding the middle income trap*, *International Herald Tribune*, 26.10.2010, p. 22

<sup>62</sup> FT, 13.7.2011, *Trade deal disputes rage on Capitol hill*

<sup>63</sup> FT, 19.12.2011, *Investing in South Korea*, p.1

<sup>64</sup> sic Justyna Lasik, Policy coordinator, European Commission, DG Trade, at Conference on Korea-EU Economic and Political Cooperation, Leuven, 31.1.2012

<sup>65</sup> *The Economist*, *The odd couple*, A special report on the Koreas, 27.9.2008, p. 5

<sup>66</sup> sic Christopher Byungho Suh, Research Fellow at Korea Institute of Finance, at Bruegel-KIF Conference on Global Financial Services Integration, Brussels, 16.4.2012

<sup>67</sup> cf. Wolfgang Pape (alias Ron Schiran), *Fukushima clears East-West Divide?* *New Europe*, Brussels, 17.4.2011, p. 14

<sup>68</sup> see results of survey by Nottingham University explained by Zhengxu Wang, *China Daily*, London, 25.5.2012, p. 11



**THE EUROPEAN UNION AND SECURITY ON THE KOREAN PENINSULA: COLLECTIVE SECURITY, CONFIDENCE-BUILDING  
AND ARMS CONTROL**

CHRISTOPH BLUTH

NEIL WINN

**1. INTRODUCTION**

Since the end of the Cold War and the dissolution of the East-West confrontation, the Korean peninsula has paradoxically witnessed an increase in tension. Unlike the Central European countries and the former Soviet Union, the North Korean communist regime did not fall, but rather consolidated its hold on power as it became increasingly isolated. North Korea's nuclear programme precipitated a major international crisis in the 1990s almost resulting in military conflict with the United States. This crisis was resolved by the Agreed Framework that involved a freezing of the nuclear programme in return for various economic benefits such as the provision of heavy fuel oil and light water reactors to alleviate North Korea's chronic energy shortage. This was accompanied by a policy of engagement (the "sunshine policy") pursued by South Korean president Kim Dae-jung and his successor Roh Moo-hyun that resulted in the development of economic cooperation between North and South. However, the Agreed Framework collapsed as a result of inconsistent implementation and evidence of North Korea's pursuit of uranium enrichment. Conservatives in South Korea viewed the collapse of the Agreed Framework and nuclear tests by North Korea as evidence of the failure of engagement policy. The effort by the Lee Myung-bak government to pursue "conditional engagement" however also failed as North Korea engaged in military provocations that prompted the wholesale termination of all economic cooperation between North and South (with the exception of the Gaesong industrial complex). As the North Korean elite became preoccupied with the leadership succession the situation on the Korean peninsula has remained tense. There is increasing awareness in South Korea that a new approach has to be found to break the cycle of engagement and confrontation and find a more durable way of engaging North Korea. This paper will provide an analysis as to why previous approaches have failed, why the institutionalist approaches to collective security that have been successful in Europe are not appropriate in this case and then consider an alternative based on the concept of normative power that moves away from the focus on arms control and security as the main vector of engaging North Korea diplomatically towards a more holistic approach.

**2. THE EUROPEAN EXPERIENCE WITH COLLECTIVE SECURITY: A MODEL FOR KOREA?**

The experience of seeking to engage North Korea over the last twenty years has demonstrated that a purely regulatory approach to arms control or even a "grand bargain" that focuses solely on security is not workable. Although the Agreed Framework and the Six Party Talks produced promising results, these were abandoned when the overall relationship between North Korea and the other parties came under stress.<sup>1</sup> But the European

experience of collective security and projecting normative power through informational and procedural diffusion of norms could provide a basis for a new form of engagement through building institutions in which the six parties plus Europe develop a more dense network of engagement that gives the North Korean elite a greater stake in preserving such a framework. Among South Korean scholars the notion of constructing institutions of collective security in Northeast Asia using the European model of CSCE as a template has been a popular theme for a long time.<sup>2</sup> This has gained more traction among the South Korean policy elite recently as other approaches to engaging North Korea have failed. Thus the leading presidential contender for the Grand National Party in the forthcoming presidential elections, Park Geun-hye, published a landmark paper in the journal *Foreign Affairs* in which she articulated the concept of "Trustpolitik". In essence, she proposed a long term process of building trust between North Korea and the other states in the region based on the example of collective security in Europe.<sup>3</sup> Among liberal elite figures in South Korea there is also a realization that new approaches to engaging North Korea have to be found. However, building trust will require institutional engagement that is broader than that of the Six Party Talks that focussed only on the nuclear issue and proved to be unsuitable to overcome the zero sum game of security in the region. In order to understand this issue, it is useful to review the efforts to use the traditional instruments of institutionalism to engage North Korea and understand why they have not worked.

### **3. UNDERSTANDING THE FUNCTION OF NORTH KOREA'S NUCLEAR PROGRAMME IN ITS POLICY TOWARDS OUTSIDE POWERS**

North Korean foreign policy behaviour has seemed confusing and Pyongyang's intentions have been subject to controversy and different interpretations. But contrary to these impressions, given the situation they find themselves in, there is a clear logic in the policies they pursue. During the Cold War period, the confrontation on the Korean peninsula was embedded in the East-West confrontation. Both Koreas were kept secure and at the same time restrained by their respective superpower allies. For North Korea the geopolitical situation was somewhat more complex than for the South, because Kim Il-sung did not accept Soviet dominance such as was exercised in parts of Eastern Europe. Consequently he pursued a policy of equidistance between China and the Soviet Union. At the same time he gradually built up North Korea's military capabilities with a view to achieving unification under his leadership when the time would be ripe. Since the end of the Cold War and the loss of economic support and reliable security guarantees from its erstwhile sponsors, the top priority for North Korea has been regime survival. The Kim regime feels threatened by the changed geopolitical environment and in particular what it calls the 'hostile policy' of the United States, and its severe economic difficulties.

The US concern with North Korea's nuclear programme provided Pyongyang with the opportunity to engage the United States. This engagement came to be perceived in Pyongyang as the key for addressing the external security concerns and the economic predicament of the DPRK. Essentially North Korea wants the US to accept the legitimacy of the regime, normalize diplomatic relations, take concrete steps to end the military threat to North Korea, such as sign a non-aggression pact, and remove economic sanctions. It is important to not only understand the motivations that drive North Korean foreign policy, but also the tactics. Just as the United States

uses coercive measures (such as unilateral and multilateral sanctions and UN Security Council resolutions) as well as incentives (the provision of fuel, the lifting of sanctions, diplomatic visits), North Korea uses its own form of pressure tactics (developing and demonstrating military capabilities, refusing to attend talks, issuing verbal threats, abandoning previous agreements) alongside cooperative gestures (permitting inspections, implementing parts of previous agreements, attending talks, entering into new agreements). The principle is 'action for action'. There are two reasons for this kind of negotiating behaviour. The first is that North Koreans want to negotiate each element of a package deal separately in order to extract the maximum concession at each stage. The second is that the nuclear and missiles programmes are the only cards that North Korea has. The Bush concept of 'complete, verifiable and irreversible disarmament' that was floated in 2004 is not workable from the North Korean point of view because once they give up this card they have no further bargaining leverage. Consequently North Korean concessions have amounted to very partial resolutions of the nuclear issue. Although prior to its first nuclear test North Korea at various times reaffirmed that it was prepared to denuclearize the Korean peninsula, the best that has ever been on offer is a freezing and the termination of the production of plutonium.

North Korea experts generally emphasize the rationality and the effectiveness of North Korea's foreign policy and diplomacy.<sup>4</sup> It is true that North Korea, a very weak state, has managed to gain significant concessions from very powerful states. The fact that the United States has decided not to use force against North Korea is an important achievement for North Korea's asymmetric strategy of deterrence. However the overall results of seventeen years of diplomacy are mixed. Although Pyongyang has received enough external support to muddle through and even somewhat improve its economic situation, it has not achieved its major objectives. Despite all of the investment into the construction of two light water reactors, by the beginning of the Obama presidency North Korea was further away than ever from having LWRs provided. By mid-2009 all of the previous diplomatic gains had been lost, and North Korea was under the most severe sanctions since negotiations over its nuclear programme began. As a result of the *Cheonan* incident in March 2010, when a South Korean frigate was sunk by North Korean special naval forces, the South Korean government cut off all political and almost all economic links with the North. Its relations with Japan, the Republic of Korea and to an extent even China had reached its lowest point ever.

The flaw in North Korea's diplomacy is that its policymakers incorrectly assess what drives US policy and therefore the manner in which they employ the instruments available to them is to some extent ineffective because they project their own world view onto others and do not anticipate the reaction of the United States correctly. Thus efforts by North Korea to coerce the United States to change its policies have often had the opposite effect. After years of negotiation, Pyongyang may have nuclear devices, but it is further away from other benefits which were within its grasp previously. The regime's constant refrain is that its main aim is to change the hostile policy of the United States towards it. But many of its actions do not promote this aim – quite to the contrary, it strengthens the hand of those in the United States who believe North Korea can never be trusted and that any negotiations or agreements with the DPRK are a waste of time.<sup>5</sup>

The concepts of national autonomy and sovereignty play a key role in North Korean diplomacy. The application of international law, external inspections or the verification of agreements are seen as being in

fundamental contradiction to these principles. The launch of a *Taepodong-2* (or *Unha-2*) missile on 5 April 2009 to put a satellite into orbit is a good example. It was clearly designed to demonstrate North Korea's missile capabilities and defiance of UNSCR 1718. It was a way for the Kim regime to demonstrate that it was standing up for its sovereign rights and was not cowed by international reaction.<sup>6</sup> It is clear from the history of US-DPRK negotiations that diplomats are often under pressure to prove that they are standing up to the demands of the United States. This can mean that they become too inflexible and lose sight of the larger objectives and fail to obtain the results that they are seeking.<sup>7</sup>

The decision to seek a nuclear capability was probably taken by Kim Il-sung in response to the Cuban Missile Crisis which made the Soviet nuclear guarantee appear unreliable. The decision to finally assemble a nuclear device and conduct a nuclear test was taken in 2003 after the 11<sup>th</sup> round of the Supreme People's Assembly in September 2003. A decisive factor was the Iraq war, which seemed to demonstrate the need for a capacity to deter a US attack.<sup>8</sup> The belief of the North Korean elite that the nuclear programme enhances the status of the DPRK, provides deterrence against external aggression and facilitates a security dialogue with the United States that enables North Korea also to obtain much needed economic support is deeply engrained. North Korea has been willing to freeze and limit its nuclear programme, but the leaders in Pyongyang have never yet reached the point where they will finally give it up, and it is difficult to conceive any circumstances under which this might happen. Even if the various demands were met and the US established diplomatic relations, signed a non-aggression pact and followed through with other promises about 'changing its hostile policy', this would not be enough to permanently guarantee North Korea's security.

On the other hand the external threat to North Korea is primarily created by the nuclear programme in the first place. There is a curious paradox that underlies North Korean foreign policy, which is that it is fundamentally predicated on making North Korea appear dangerous to the international community. This motivates the United States and other countries to engage with North Korea in order to mitigate the threat, but in order for this to be sustained the threat has to be periodically revived. This creates the seemingly inescapable cycle of conflict and cooperation. It also accounts for North Korea's diplomacy which to outsiders sometimes appears erratic and even irrational.

#### **4. UNDERSTANDING US POLICY TOWARDS THE KOREAN PENINSULA**

US policy towards North Korea has been dominated by the nuclear programme since the early nineties. This is because nuclear proliferation has been identified as a general problem of global security, and the perception in Washington is that states that renege on their obligations under the Nuclear Nonproliferation Treaty (NPT) threaten the treaty regime as a whole. Moreover, if North Korea were to acquire a significant nuclear arsenal this could embolden it to engage in more substantial military provocations against South Korea, whereas without the nuclear element the strategic balance on the Korean peninsula is considered to be stable. Policymakers in Washington have been faced with a fundamental disagreement among politicians and officials on how to deal with this issue, as well as the underlying paradoxes of the issue that they have to confront. The conflict over what

US policy should be associated with different interpretations of the nature of the problem. Among conservatives there is a view that North Korea is a 'rogue', totalitarian regime that brutalises its own population and that its propensity for external aggression is a result of its 'nature' in common with totalitarian regimes elsewhere in history. The international community should use all coercive means at its disposal, from isolation to sanctions and military action to contain and deal with the threat that it poses.<sup>9</sup> President Bush included North Korea in the 'axis of evil' of states that pose a threat to the international community by their support for terrorism and the development of weapons mass destruction.<sup>10</sup> The term 'evil', of course, is just a label that says nothing about how the national interests of North Korea are constituted or the objectives of national policies. In fact, it discourages further analysis. Apart from the fact that this particular approach substitutes name-calling for a real effort to understand North Korea, it does not provide a coherent basis for policy. Moreover, it embodies significant risks given the support for military actions against North Korea and the advocacy of total economic sanctions in order to bring about regime change. Although there is little chance that these objectives will be achievable given the refusal of China to cut off support for North Korea, it could have catastrophic consequences if they were realised. The liberal perspective on North Korea is grounded in a realist approach to international relations and interprets North Korean foreign policy behaviour as a rational response to the geopolitical situation that the DPRK finds itself in the aftermath of the Cold War. North Korea perceives the United States as constituting a real and present threat to its national security, threatening pre-emptive strikes and refusing to recognize the legitimacy of the North Korean state.<sup>11</sup> Looking at North Korean actions in more detail, it is possible to explain many of them as countermoves to American political pressure or even military threats. The corollary is that if the external threat is mitigated, then North Korea's behaviour will change. The more extreme version of this perspective, which is espoused by policymakers in China and many on the left in South Korea see the United States as the real source of instability in the region.<sup>12</sup>

Those officials and politicians in the US who became directly involved in negotiations with North Korea were not necessarily located in one or the other camp. Unlike the Bush administration, the Clinton officials never attempted to provide an explanation for North Korea's behaviour. It came down to the pragmatic issue of how the nuclear programme could be stopped. Once the military option was ruled out, diplomacy backed up by sanctions was the only option. Ironically the Bush administration adopted a similarly pragmatic approach in its second term despite the ideological predispositions of the President who included North Korea in the 'axis of evil'. The term "axis of evil" originated from one of Bush's speechwriters David Frum, who had been given the task to provide a conceptualisation of the war on terror for Bush's 2002 "State of the Union" address in terms that moved it beyond Islam and Al Qaeda to focus more generally on the phenomenon of terrorism and weapons of mass destruction (WMD). Frum drafted a memo in which he developed the idea of an "axis of hatred" that compared the Axis powers of World War II with contemporary "rogue states" and international terrorists. Michael Gerson, Bush's chief speech writer, changed the expression "axis of hatred" to "axis of evil" reminiscent of President Ronald Reagan's characterisation of the Soviet Union as an "evil empire". The first draft of the "State of the Union" speech referred to the "axis of evil" without mentioning North Korea or Iran. Those two countries were added in before the speech was delivered at the behest of National Security Advisor Condoleezza Rice in order to avoid an

exclusive focus on Iraq, given the preparations for a military confrontation with Iraq. But in the original concept, there was no suggestion that North Korea was co-operating with other countries and Islamic terrorist groups to prepare attacks against the United States. The concept of the “axis” was just a figure of speech. The only collusion that US policymakers believed in was one between Saddam Hussein and Al Qaeda, and that has turned out to be an illusion.<sup>13</sup>

There is no doubt that the deep divisions in Washington about the nature of the problem and the appropriate means to deal with it seriously hampered US diplomatic efforts. The unwillingness of Congress to support the Clinton administration meant that there could be no treaty with the DPRK, only a so-called ‘agreed framework’. Moreover, Congress could not be relied upon to provide any funds, so the financial burden of implementing the agreed framework had to be assumed mostly by the South Koreans and the Japanese. The funds for heavy fuel oil promised by the US had to be found from discretionary funding, which caused supplies to be behind schedule and meant the United States was seen as an unreliable partner in the agreed framework.<sup>14</sup>

The more fundamental issue is that the basic principles of whatever agreement is arrived at with the DPRK simply cannot be fully implemented. During seventeen years of negotiation neither side has come to the point where they were really willing to hold up their end of the bargain. Moreover, just as North Korea will never fully relinquish its nuclear card, the US will never fully accept the legitimacy of the Kim regime, and American policymakers are deluding themselves if they think otherwise. Consequently the manner in which the objectives of negotiations with North Korea have been framed defines ideals, rather than achievable goals. The two sides will have to settle for something in-between.

## **5. DEALING WITH NORTH KOREA: WHAT IS TO BE DONE?**

Much of the discourse in relation to North Korea has emphasized the threat that North Korea represents to the international community. Consequently the main focus of diplomatic engagement has been on the nuclear programme. While this was inevitable, given that North Korea sought to leverage its military capabilities in order for the international community and especially the United States to engage with it, this has prevented the emergence of a holistic approach to the crisis on the Korean peninsula. Thus all of the diplomatic resources of the United States have been devoted to stop North Korea from acquiring a nuclear weapon. Now that this has failed, the objective is to put the genie back in the bottle and persuade Pyongyang to eliminate its nuclear capabilities. However, there is little chance that this can be achieved. The United States has both tried to compel and persuade North Korea to give up its nuclear programme. The results have been mixed, but in the final analysis North Korea did complete the development of a nuclear weapon and the North Korean elite has decided not to accept complete denuclearization.<sup>15</sup>

The institutionalist approach to dealing with the North Korean nuclear issue and the crisis on the Korean peninsula more generally, based on efforts to persuade North Korea to adhere to international norms and obligations in international law such as the NPT, or by providing a mix of sanctions and incentives has clearly proven ineffective. North Korea has defected from almost every treaty or framework it has ever been party to.

This includes all of agreements between North and South as well as the NPT, the Joint Declaration on Denuclearization, agreements between the DPRK and Japan and even many commercial agreements where goods were received but not paid for. The institutionalist concept does not work in the case of North Korea because the North Korean leaders never adopt and internalize the principles and values underlying any institution that the DPRK becomes a member of. Small violations in any agreement are used as an excuse to defect as soon as the North Koreans believe that the agreement no longer suits their purposes or that a better deal could be had. Attempts to link various dimensions of relations with North Korea have also proven unsuccessful, as the leaders in Pyongyang will honour those provisions that are important to them and ignore others which are too insignificant or intangible to bring about a collapse of the agreement as a whole.<sup>16</sup>

How to we explain this kind of behaviour? There are two different aspects to this. The first is that the North Koreans only respect power, and have absolutely no respect for norms or values. Moreover, they believe that others act in precisely the same way that they do. From this perspective, international law and institutions have no merit in and of themselves, but are just used as instruments of power to achieve certain objectives. This is why the notion that North Korea should permit intrusive IAEA inspections merely because they acceded to the NPT is incomprehensible to North Korean leaders, they see the IAEA just as an instrument of US policy. Efforts to negotiate and enforce agreements once they have been reached are just part of a continuous power play, in which North Korea seeks to extract the maximum advantage at every turn.

The second aspect is that the confrontation over the nuclear programme is merely a symptom of a more fundamental problem for the North Korean state that is fundamentally irresolvable. The general concept of negotiations over the nuclear programme was that the international community would underwrite North Korea economically and normalise relations in return for the abandonment of weapons of mass destruction. However these efforts were based on faulty premises. The problem is that a resolution of the nuclear issue does not solve the underlying problem. The North Korean regime will continue to remain unacceptable to the United States and most of the international community. No matter what agreements are signed, the outside world will seek gradual regime change. On the other hand, the North Korean state is not viable politically, socially and economically. Its rulers reject internal reform, refuse to open the country up to the world and conduct its foreign policy on the basis of threats. Its projection of the external threat is a major element of its internal legitimation. This leaves the North Korean leadership with the dilemma that it needs to improve its relations with the outside world and especially the United States in order to mitigate the external threat and obtain the economic support it needs, while at the same time any such improvement undermines the regime and questions its very existence. Thus, as we have seen, an unending cycle of confrontation and accommodation is inevitable while this regime endures, and this will last into the era beyond Kim Jong-il as his son Kim Jong-eun has taken over the reigns' of power. The external projection of internal regime insecurity has been particularly evident since Kim Jong-il's illness in 2008 which precipitated the process of succession. Subsequently the Six Party Talks were suspended, with the collapse of previously reached agreements, culminating in a second nuclear test and a missile test. The sinking of a South Korean frigate (the *Cheonan*) and the shelling of the island of Yeonpyeong in November 2010 brought relations between North Korea and most of the outside world to its lowest point since the end of the Cold War. After the death of



the “dear leader” in 2011 the transition to the new leadership seemed to go more smoothly than feared. There was little evidence of any serious challenge to the position of Kim Jon-eun, supported by his uncle Jang Song-taek, and the dismissal and execution of Ryu Kyong, a senior intelligence official and Kim Chol, a senior defence official in January 2012 and the purge Chief of the General Staff Vice-Marshal Ri Yong-ho on 16 July 2012 was further evidence of Kim’s consolidation of his leadership, but whether this means that he has the political room for maneuver or the intention to re-engage the West and initiate significant reform remains uncertain as of the end of 2012.<sup>17</sup>

Efforts to compel North Korea to eliminate its nuclear devices and materials or its ballistic missiles are doomed to failure.<sup>18</sup> Sanctions have a limited effect as long as China provides enough food and oil to maintain a basic lifeline for the regime. Diplomatic pressure and UN Security Council Resolutions produce a reaction of defiance. The use of force is so risky that no US president can contemplate it.<sup>19</sup>

Another possible strategy would be to simply ignore North Korea and not to engage with it at all. This form of containment might look attractive, but there are significant dangers associated with it. First of all there would no longer be any constraints on the nuclear programme and the development of ballistic missiles. If North Korea restores the facilities at Yongbyon and completes the construction of the 50 MW(e) and the 200 MW(e) reactors, it will be able to produce significant stockpiles of plutonium. Alternatively, it could proceed with the production of HEU (highly enriched uranium) in order to manufacture nuclear warheads. Moreover, it is possible that in due course it will develop a ballistic missile of true intercontinental range, capable of reaching the continental United States.<sup>20</sup> From Washington’s point of view, this would represent an unacceptable risk and shift in the balance of power which would constrain US options in dealing with North Korea. For these reasons, a form of engagement which enables the international community to put some constraints on North Korean nuclear capabilities and reduces military provocations seems to be the only viable option, however unsatisfactory it might be.

The concept of economic engagement with North Korea is predicated on the notion that even if there are no specific concessions from the regime in response to economic aid, it will create an increasing dependency of the regime on neighbouring countries. This dependency is a reality, but the regime has been trying to limit its impact and it has been almost impossible for either China, Japan, South Korea or the United States to translate this into tangible political leverage. The Lee Myung-bak government in Seoul proposed a very substantial investment in North Korea, mainly in the development of infrastructure to double North Korea’s GDP and modernise its economy in the hope that this would inevitably produce social and political change. So far this proposal has not gone anywhere due to the conditionalities (such as abandoning the nuclear programme) attached. But the grip of the regime is weakening very gradually. Government control in the northern provinces has weakened as the central government no longer has the resources to sustain the public distribution system consistently at a level that meets basic needs. The border has become porous, and North Korean border guards are easily bribed. Many North Koreans, especially in the northern provinces, have access to Chinese cellphones. While there is no political space for the emergence of an opposition or rebellion, the North Korean regime cannot



be sustained indefinitely. Change will come sooner or later. The problem is that it is really hard to conceive how there can be a soft landing.

## **6. TRANSFERENCE OF NORMS: GOING BEYOND SIMPLE INSTITUTIONALISM**

As the preceding section has shown, the standard concepts of integrating North Korea into a collective security system or even building trust with North Korea are bound to fail due to North Korea's failure to internalise the norms of any institution that it joins. Nevertheless the endurance of the Gaseong Industrial complex demonstrates that there are modes of cooperation that North Korea is interested in. Previous studies on collective security in Asia have focussed on traditional regime theory and institutionalism. However, in recent years the diffusion of international norms has come to be recognised to be one of the key determinants in the changes in the geopolitical environment in which the use of force or the threat of the use of force has become a largely irrelevant factor. To this purpose it would be useful to exploit the insights from the recent body of literature on EU foreign policy and norm diffusion (pioneered by Ian Manners) to develop new approaches to institution building in Northeast Asia.

Neo-realism sees international relations to be primarily determined by material factors, whereas other approaches emphasize the importance of ideas and values, such as the constructivist approach, which is based on the notion that power in international politics is socially constructed. In other words, power relationships are not given in nature or determined by material factors alone and consequently can be altered by human practice. In the constructivist approach, elements of social reality such as perceptions of identity, norms and values, interests, fears and culture have a significant impact on the interactions of units (i.e. states) in the international system. In the words of Alexander Wendt: 'The effects of anarchy are contingent on the desires and beliefs states have and the policies they pursue.'<sup>21</sup> We can go further than that and state that the effects of anarchy are constrained by shared norms. Although the international system is anarchic in the sense that there is no world government and each state is considered to be sovereign, in reality many aspects of the interactions between states, in particular the use of force and international trade are highly regulated by treaties as well as international regimes and institutions. Recent work on norm diffusion has emphasized several mechanisms of for the transmission of norms.<sup>22</sup> These include the spread of ideas in a globalizing world,<sup>23</sup> the socialization through international institutions<sup>24</sup> and the adoption of international norms in order to achieve legitimacy.<sup>25</sup> The effectiveness of these mechanisms is disputed in the literature. However, there is some level of agreement that in order for authoritarian regimes to adopt international norms it is important that such norms find significant acceptance in the population and that there is some political pressure for a greater acceptance of political norms by political leaders. The literature accounts very well for the failure of North Korea to adopt international laws, since the North Korean leadership has emphasized its national sovereignty and demanded the acceptance of its behaviour rather than adapting to international expectations. The international isolation of the country has minimized the density of interactions with the outside world, while the North Korean leadership derives its

legitimacy from the hostility of the outside the world rather than its acceptance. This is why a different approach to engaging North Korea is needed.

## **7. NORMATIVE POWER EUROPE AND EU FOREIGN POLICY: A MODEL FOR ENGAGEMENT WITH NORTH KOREA?**

Normative Power Europe (NPE) was first coined by Ian Manners in his seminal piece on the subject that was published in 2002.<sup>26</sup> Manners' more recent work characterises NPE as being ideational in scope involving principles, actions and impact that influence the conduct of European Union (EU) foreign policy.<sup>27</sup> The impact of the revolutions of 1989, 9/11 and the recent global financial crisis have all had impacts on world order. Manners' contends that these events tell us something about the power of ideas and processes of ideation in the conduct of international relations.<sup>28</sup> What matters in this view is the power of ideas to potentially transform the world in a normatively sustainable manner. NPE operates according to a tripartite schema of principles, actions and impact. Principles comprise fundamental rights and freedoms in European and international law, the United Nations (UN) Charter, the Helsinki Final Act and so forth. Principles follow from international law and treaties that have been in operation in the post-War period and can be said to be legitimate because of this.<sup>29</sup> The EU's greatest asset is constructive engagement and mutual dialogue in this regard.

According to Manners European principles and persuasion are important for understanding EU *actions* in the world:

Normative power should...be perceived as persuasive in the actions taken to promote such principles. If normative justification is to be convincing or attractive, then the actions taken must involve persuasion, argumentation, and the conferral of prestige or shame. Persuasion in the promotion of principles in world politics involves constructive engagement, the institutionalisation of relations, and the encouragement of multi- and pluri-lateral dialogue between participants...Similarly, such engagement and debate can also involve the conferral of prestige or shame by participants.<sup>30</sup>

In recent times the EU has gone beyond its traditional policies in aid, trade and development broadening its remit to become a niche conflict prevention and crisis management actor responding to changes in post-1989 and post-9/11 world politics. The EU's engagement with other actors in the outside world is a key manifestation of this trend in that actions follow European principles and norms to a greater degree than ever before.

Simplicity, partnership and consistency are important for EU foreign policy and its ideational context in projecting European values towards the outside world. European normative power impacts in the world are important for the projection and emulation of those values in the international sphere. Indeed:

Normative power should ultimately be envisaged as socialising in the impact of the actions taken to promote such principles. If normative justification is to be convincing or attractive, then its impact must be involve socialisation, partnership, and ownership. Socialisation as an impact of the promotion of principles in world politics should be seen as being part of an open-ended process of engagement, debate and understanding. Partnership as an impact of the promotion of principles may be the result of institutionalised relationships created by the participating parties whether multilateral or plurilateral, international or transnational. Ownership as an impact of the promotion of

principles involves practices of joint or local ownership as a result of partner involvement and consultation. However, such impacts of normative power should be based on the recognition that while international diplomatic socialisation is largely a mirage, the nurturing of domestic, transnational, and international support for international principles can be helped by the three-part processes of normative justification conceived here.<sup>31</sup>

The consequences of NPE in the world are linked to degrees of holisticity, justifiability and sustainability in EU foreign policy.<sup>32</sup> The EU has in fact developed a holistic normative aspect to its foreign policy in the past twenty years in response to changes in world politics. The Union combines pacific normative values in its aid, trade, development, conflict prevention and crisis management policies and doctrines which are enshrined in key documents such as the European Security Strategy (2003) and the EU Counter-Terrorism Strategy (2006). Yet the EU still often thinks in older pre-Cosmopolitan categories associated with Westphalian concepts of power and order in international relations such as, for example, determining EU foreign policy by competing with other Great Powers, developing military policies for Common Security and Defence Policy (CSDP) operations, and by aggressively pushing realist agendas in international trade for market share in a zero-sum fashion.

Hence even though the EU represents a *sui generis* organisational alliance of new modes of international thought and action it still behaves in an inherently self-interested state-like fashion when the conditions on the ground matter. This has the disadvantage of undermining the project of NPE values and concepts beyond the borders of Europe which are supposed to be post-Westphalian in substance.<sup>33</sup> In essence the EU is *both* a normative actor and a self-interested realist actor in global politics depending on the issue and context. One advantage of being seen to be a non-traditional actor that espouses NPE values is that the EU is not considered to be a threat in international relations in the traditional military sense. This has meant that many states and regional organisations have sought to emulate the Union in its organisation and policies if not always in replicating its values. This allows the Union to play the role of honest broker in world politics, being less of a threat than traditional military powers. This has benefits for the EU also for external actors' which seek to forge deeper relations with the EU and also helps the EU to build normatively constructed relations from its own perspective with outside powers.

EU norm diffusion practices in the post-Cold War world are predicated on the need to secure Europe and its stability in a time of momentous change after the fall of Communism and the rise of transnational security threats after 9/11. The post-1989 order in Europe was characterised by hiatus and uncertainty in the period 1989-1993 with some doubts as to the role of Germany in the new Europe, the relationship between Paris and Bonn/Berlin, whether the former communist states in Eastern Europe would join the EU, and to what extent core European values formed around democracy and human rights would alter as a response to changes in the wider international system. This formed the context for broader EU norm diffusion in Europe after 1989 and post 9/11. In fact, European values have been extended over the past two decades by an extension of the rule of EU law both in Europe and towards states wanting to join the Union. Successive EU enlargements since 1995 have emphasised strict Copenhagen criteria relating to democratic and capitalist norms that prospective members must take on board to join the EU. The rise of phenomena such as humanitarian intervention, the extension of the

rule of law, the right to protect, democracy promotion and good governance in Europe's periphery have extended European norm diffusion both extra-territorially and ideationally outside of the borders of the EU.

Specific EU policies such as the European Neighbourhood Policy (ENP) have also sought to project European values in Europe and beyond via a mixture of hard conditionalities related to EU law and regulation from the centre in Brussels. In this sense this is similar to the asymmetrical process of EU enlargement in that Brussels sets the conditions and those wanting something from the Union (such as trade agreements, access to the Single European Market, or membership of the Union) have to accept Brussels political and economic conditionalities. This in itself spreads EU norms from above via elite regulation and laws as contained in the Union's Treaties. The Treaty on European Union (TEU) (1992) preamble emphasises 'the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law' in EU foreign and security policy and within the Union more generally. The Lisbon Treaty defines fundamental EU norms and values thus:

The Lisbon Treaty explicitly states that the EU aims to promote peace (Title I, Article 3-1) and that its role in the world would reflect the principles that have inspired its creation, development and enlargement (Title V, Article 21). The Treaty identifies the contribution to peace, the prevention of conflict and the strengthening of international security amongst its core foreign policy priorities (Title V, Article 2c).<sup>34</sup>

However, this process of top-down elite democratic norm diffusion by the EU is also underpinned by an emphasis on the Union making connections with bottom-up grass roots movements in the civil society of third party states and groups. The Union especially tries to embed its norms in war torn and divided societies via its policies of conflict resolution to spread stability.<sup>35</sup>

The EU's values and norms and their diffusion are also linked to the EU's conception of itself as a foreign policy actor. In the literature the EU is often said to be a soft power or civilian power as was first espoused by Francois Duchêne<sup>36</sup> where the Union was characterised as a zone of legal and functional stability which operates in a non-threatening and non-military fashion. The obverse of this is that the EU is characterised as a military power, which does not fundamentally capture either its predominant economic identity in the world or its civilian modus operandi. Indeed, the military power Europe thesis is slightly odd in that it is derived from realist theory which is used to analyse the state as the key unit in international relations. The EU is not a state, it does not possess the legitimate monopoly of violence over its people like a state, and is a unique *sui generis* organisation that is largely built on the regulation of economic power. In fact the EU is a predominantly civilian power both practically and ideologically that emphasises economic power and legal regulation and shuns the use force. This is partially as a result of how the EU has developed internally and externally as an economic actor since the early 1950s and also due to a downgrading in Europe of military tools as a means for solving political problems after WWII. European norms and values came to embody the creation of a zone of peace, prosperity and stability in the post-War world which has mostly endured in Europe to present day.

In the North Korean case the EU sought to engage normatively and practically with Pyongyang in the late 1990s and early 2000s. The EU(3) of Britain, France, Germany and the then EU High Representative for

Foreign and Security Policy Javier Solana sought to constructively engage with North Korea in talks on Pyongyang's then embryonic nuclear arsenal. The case illustrates that there are real limits to the EU projecting normative power successfully with regard to isolated states, when Britain, France and Germany have different strategic priorities (Wagnsson, 2010).<sup>37</sup> The disjointed intergovernmental diplomatic interactions between the EU and North Korea allowed the Kim Jong-il regime to pursue its nuclear weapons programme precisely because the EU *itself* was not directly engaging the Kim regime *via* its characteristic NPE-style norm diffusion techniques at the level of governmental, business/economic, military/security and educational/cultural élites. However, things have moved on since the early 2000s. An MBA programme was set up with the help of Korean-American money in 2009 at the Pyongyang University of Science and Technology (PUST) which can only increase interactions between the West and North Korea. The New York Philharmonic Orchestra visited North Korea in the same year. On the governmental level the EU's supranational institutions, particularly the European Commission, are held as being significant in South and East Asia (especially in world trade) and this can be built upon in different sectors of interaction at the governmental and non-governmental levels as has happened in the EU's interactions with China over the last decade.<sup>38</sup>

In order for an approach to engagement based on the diffusion and projection of norms to have any chance, it is important to start with two basic principles. The first is that engagement has to be holistic and must respect Kim Dae-jung's principle of the separation of politics and economics. There has to be an acceptance that for the time being deterrence is the only way to address the security situation on Korean peninsula. The strategic situation is actually quite stable as neither the North nor the South and the US consider that anything can be gained from initiating a war. The Proliferation Security Initiative and the UN Security Council can be used to address the proliferation concerns in relation to North Korea. A dialogue on the nuclear issue can continue, but it is not prudent to link economic engagement to nuclear disarmament. There is now ample experience that the reinforcement of North Korea's self-isolation with economic sanctions merely strengthens the control of the regime. Instead a more broadly based programme of economic engagement that involves not only South Korea but also the European Union, the United States and Japan could lead to a much higher density of interactions and interdependencies from which the North Korea elite would find it impossible to extract itself in the future. Moreover, it would reduce the DPRKs dependency on China and thereby radically reduce any benefits Beijing derives from the role of North Korea as a buffer state. China's policy towards the Korean peninsula has so far been dominated by the fear of instability and the risk of a political and economic collapse that would result in the influx of a large number of refugees into China and the outbreak of uncontrollable conflict on the Korean peninsula that would provoke a major joint US-ROK invasion of the North. China's strategy with regard to North Korea has been to use limited economic and political support in order to persuade the North Korean regime to reform its economy and to some extent its political system in order to follow China's path as a way to escape from the current impasse. China has been prepared to pay a significant political price in terms of its relations with the United States, the Republic of Korea and its role as a "responsible world power" for its relations with North Korea. The political calculus might change for China if North Korea's dependence on China is reduced and its economy reforms due to more direct engagement by other players such as the European Union alongside South Korea and

the United States improves domestic stability. It would also diminish the incentives for Pyongyang to use military threats as a means to extract economic and political concessions.<sup>39</sup> The involvement of significant outside players in important elements of the North Korean economy and its infrastructure could in the medium term have a dramatic effect on opening up the country and weaken the hostility of the regime to the outside world. A complex network of political and economic relations would socialise North Korea into accepting political and legal norms on which such relations would have to depend.

## **8. CONCLUSION**

The global security landscape has changed fundamentally since the end of the Cold war. Clearly the major risk to international security in the time following the post-Cold war period resides in the so-called new wars, sub-state conflicts that arise from ethnic disputes, or failed states in regions of low development.<sup>40</sup> For the vast majority of states, there is no significant risk of war. This is a fundamental reason why the nuclear non-proliferation regime is robust.

There is a substantial recent body of literature which argues that major war is becoming obsolete as an instrument of foreign policy or as an activity of states. The most highly developed version of this thesis has been presented Steven Pinker who has sought to demonstrate, using a wealth of historical and contemporary statistical analyses, that not only interstate war, but all forms of violence (including homicide and other forms of criminal behaviour) have undergone a systemic, worldwide decline as cultural norms have changed. Pinker, Joshua Goldstein and Christopher Fettweis also demonstrate the dramatic decline in interstate warfare (to the point where this phenomenon has become exceedingly rare) and the precipitous decline in worldwide casualties of war and terrorism since the end of World War II.<sup>41</sup> The work of Michael Mandelbaum, John Mueller and Christopher Fettweis is based on the observation that the costs of war have dramatically increased while its benefits have become marginal.<sup>42</sup> The sources of wealth for knowledge-based economies in a world of global trade are no longer to be found in armed conquest. In the past, at the end of the 19<sup>th</sup> century, war was considered a normal, legitimate and necessary activity of states. But the norms governing international relations have changed. Now the use of force is no longer considered acceptable except under very exceptional and restricted circumstances, and war is considered to be akin to a form of criminal activity.

Traditional international relations theory has viewed the distribution of power as the key variable that explains the sources of insecurity. This implies that major powers use military force to coerce smaller states, while smaller states enter alliances to either balance the major powers or bandwagon. But such a view of international security is anachronistic. In the contemporary international system, it is the asymmetry of the diffusion of norms rather than the asymmetry of power which accounts for the sources of insecurity. This is why both the United States and the European Union perceive the diffusion of norms as a critical instrument for promoting international security.

However, the conceptualisation of the dynamics of nuclear proliferation in the academic community and by extension in the policy community continues to be based on more traditional approaches to international

relations, even though the empirical evidence on proliferation completely defies the concepts of neo-realism.<sup>43</sup> This has led to a political consensus that coercive measures such as sanctions and the threat of the use of military force are appropriate means to deal with aspiring nuclear powers, generally dubbed “rogue states”. It is this conceptual narrative that has defined US policy towards North Korea since the early 1990s. The problem is that such an approach is not compatible with the projection of norms. Although the United States is justified in maintaining robust power projection capabilities, the strategic objective of US policy must be to induce North Korea to act within the rule of law both domestically and in its foreign policy, which entails abandoning the use of military threats and provocations as tools of diplomacy. Consequently the United States and South Korea need to be careful about the use of force and even the threat of the use of force, because otherwise the legitimacy of their cause will be undermined. This means that armed force should only be used in response to armed aggression or if otherwise sanctioned by the UN Security Council. But it also means that the successful diffusion of norms requires the construction of a network of relations with North Korea in which security is only one and not the dominant element. This where a new initiative involving the European Union together with the other five powers engaged with North Korea could be used to develop a fundamentally new approach to dealing with the crisis on the Korean peninsula.

## Endnotes

<sup>1</sup>For a detail account of the history, see Christoph Bluth, *Crisis on the Korean Peninsula*, Dulles, VA, Potomac Press 2011

<sup>2</sup> Park Min-Hyoung, “A Cooperative Security System in Northeast Asia: the ROK’s Strategic Choices,” *East Asian Affairs*, Vol. 25, No. 1(2011), pp. 1-25

<sup>3</sup> Park Geun-hye, ‘A New Korea’, *Foreign Affairs*, September 2011

<sup>4</sup>A view shared by some US diplomats’ interviews with State Department official Yuri Kim in Seoul 2004, and Washington, DC, 2007. See also Scott Snyder, *Negotiating on The Edge – North Korean Negotiating Behavior*, Washington, DC, United States Institute of Peace Press 2002.

<sup>5</sup>Bruce Bechtel, *Defiant Failed State*, Washington, DC, Potomac 2010

<sup>6</sup>Jae-soon Chang and Kelly Olsen, ‘Analysts: Rocket Gives North Korea New Bargaining Chip,’ *Associated Press*, 6 April 2009; see International Crisis Group, *North Korea’s Missile Launch: The Risks of Overreaction*, Asia Briefing No.91, Seoul 31 March 2009

<sup>7</sup>Robert L. Gallucci, Daniel B. Poneman, and Joel S. Wit, *Going Critical: The First North Korean Nuclear Crisis*, Washington, DC, Brookings Institution, 2004.

<sup>8</sup>Based on conversations with Prof. Lim Eul-chul, Kyungnam University, Seoul about his various discussions with North Korean foreign ministry officials in Seoul 2008/2009; see also Chosun Central News Agency, 16 October 2003.

<sup>9</sup>Beyond the Axis of Evil: Additional Threats from Weapons of Mass Destruction’, by The Honorable John R. Bolton, Heritage Lecture #743, 6 May 2002; John R. Bolton, ‘The Post-American Presidency’, *Standpoint*, July/August 2009, pp. 42-45

<sup>10</sup> Interestingly, North Korea was not included in the original draft of the speech and inserted later at the instruction of Condoleezza Rice. Mike Chinoy, *Meltdown*, New York NY, St. Martin’s Press, 2008, p.69.

<sup>11</sup>Bruce Cumings, ‘Creating Korean insecurity: The US role’, in Hazel Smith ed., *Reconstituting Korean Security*, New York, NY, United Nations University Press 2007, 21-42

<sup>12</sup>Leon Sigal, *Disarming Strangers*, Princeton, NJ, Princeton University Press 1998; Sigal, Leon Sigal, ‘Building a Peace Regime in Korea: An American View’, *International Journal of Korean Unification Studies*, Vol.15, No.1, 30-52, 2006; Bruce Cumings, *Korea’s Place in the Sun*, New York, NY, W.W.Norton&Co. 2005.

<sup>13</sup>Bob Woodward, *Plan of Attack*, New York, NY, Simon&Schuster 2004, pp.86-88

<sup>14</sup>James G. Strohmaier, *Extorting Cooperation: A Case Study of the Negotiation and Implementation of the 1994 U.S.-DPRK Agreed Framework*, Ph.D. Dissertation, University of Kentucky 2003.

<sup>15</sup> Bruce E. Bechtel, Jr., *Defiant Failed State*, Washington, D.C., Potomac Books 2010

<sup>16</sup> Ralph C. Hassig and Kongdan Oh, *North Korea Through the Looking Glass*, Washington, DC, Brookings Institution, 2000.

<sup>17</sup>“N.Korean leader dismissed, purged 31 ranking officials after appointment”, Korea Herald 23 October 2012



<sup>18</sup>This is notwithstanding the fact the North Korea's missile programme is less advanced than has previously been believed, as the failed missile test of 2012 demonstrated; for more detail on the limitations of North Korean missile programme see Christoph Bluth, *Crisis on the Korean Peninsula*, Dulles, VA, Potomac 2011, Chapter 2

<sup>19</sup>Ted Galen Carpenter and Doug Bandow, *The Korean Conundrum*, Basingstoke, Palgrave 2004.

<sup>20</sup>International Institute for Strategic Studies, *North Korean Security Challenges – A net assessment*, London, IISS 2011.

<sup>21</sup>Alexander Wendt, *Social Theory of International Politics*, (Cambridge, Cambridge University Press 1999), p.196.

<sup>22</sup>Jeffrey Checkel (ed.), *International Institutions and Socialization in Europe*, Cambridge, Cambridge University Press 2007

<sup>23</sup>Thomas Risse, Thomas Jetschke, Anja Schmitz, Hans Peter, Eds., *Die Macht der Menschenrechte. Internationale Normen, kommunikatives Handeln und politischer Wandel in den Ländern des Südens*, Baden-Baden, Nomos 2004.

<sup>24</sup>Jeffrey T. Checkel, 'Norms, Institutions, and National Identity in Contemporary Europe', *International Studies Quarterly*, 43:1 (1999), pp. 83–114; Martha Finnemore, 'Norms, Culture, and World Politics: Insights from Sociology's Institutionalism', *International Organization*, 50:2 (1996).

<sup>25</sup>Hiro Katsumata, 'Mimetic adoption and norm diffusion: 'Western' security cooperation in Southeast Asia?', *Review of International Studies*, Volume 37, Issue 02, April 2011, pp 557-576

<sup>26</sup>Ian Manners, 'Normative Power Europe: A Contradiction in Terms?', *Journal of Common Market Studies*, Vol. 40, No.2, 2002, pp.235-258.

<sup>27</sup>Ian Manners, 'The Concept of Normative Power in World Politics', Danish Institute for International Studies - DIIS Brief, May 2009.

<sup>28</sup>Manners, 'The Concept of Normative Power in World Politics', p.3

<sup>29</sup>Manners, 'The Concept of Normative Power in World Politics', pp.2-3

<sup>30</sup>Manners, 'The Concept of Normative Power in World Politics', p.3

<sup>31</sup>Manners, 'The Concept of Normative Power in World Politics', pp.3-4

<sup>32</sup>Manners, 'The Concept of Normative Power in World Politics', p.4

<sup>33</sup>Adrian Hyde-Price, "'Normative' Power Europe: A Realist Critique', *Journal of European Public Policy*, Vol.13, No.2, 2006, pp.217-234.

<sup>34</sup>Nathalie Tocci, 'The European Union, Conflict Transformation and Civil Society: A Conceptual Framework', MICROCON Policy Working Paper 1, 2008, Brighton: MICROCON Centre, Institute of Development Studies, p.2.

<sup>35</sup>See: Nathalie Tocci, (ed.), *Who is a Normative Foreign Policy Actor?*, Brussels, CEPS Press 2008.

<sup>36</sup>Francois Duchêne, 'Europe's role in world peace',. In Richard Mayne (ed.), *Europe Tomorrow*. Sixteen Europeans look ahead. London: Collins, 1972, pp.32-47.

<sup>37</sup>Charlotte Wagnsson, 'Divided power Europe: normative divergences among the EU 'big three'', *Journal of European Public Policy*, Vol.17, No.8, 2010, pp.1089-1105.

<sup>38</sup>Yiwei Wang, 'The Identity Dilemmas of EU Normative Power', in André Gerrits, (ed.) *Normative Power in a Changing World: A Discussion*, The Hague, The Netherlands Institute for International Affairs Press, Clingendael, 2009, pp.67-75.

<sup>39</sup>Christoph Bluth and Chunyao Yi, "China and the Future of the Korean Peninsula", *Journal of Strategic and International Studies* (CERIS), no.5, 2012, pp.20-30

<sup>40</sup>Mary Kaldor, *Old Wars and New War: Organised Violence in a New Era*, (Stanford CA: Stanford University Press, 2007)

<sup>41</sup>Steven Pinker, *The Better Angels of Our Nature: The Decline of Violence in History and Its Causes*, (London, Allan Lane 2011); Christopher J. Fettweis, *Dangerous Times? The International Politics of Great Power Peace*, (Washington, DC: Georgetown University Press 2011); Joshua S. Goldstein, *Winning the War on War: The Decline of Armed Conflict Worldwide*, (London, Dutton 2011); Richard Ned Lebow, *Why Nations Fight*, (Cambridge: Cambridge University Press 2010)

<sup>42</sup>John Mueller, *Retreat from Doomsday: The obsolescence of modern war*, New York, NY: Basic Books 1989; Michael Mandelbaum, 'Is Major War Obsolete', *Survival*, Vol.40 No.4, 1998, pp.20-38

<sup>43</sup>Christoph Bluth, 'The Irrelevance of 'Trusting Relationships' in the Nuclear Non-Proliferation Treaty: Reconsidering the Dynamics of Proliferation', *British Journal of Politics & International Relations* 14(1):115-130, 2012.



## **NORTH KOREA'S REVEALED COMPARATIVE ADVANTAGE (RCA) ON THE EU MARKET AND ITS IMPLICATIONS \***

DEOK RYONG YOON

### **1. INTRODUCTION**

After the economic collapse in the beginning of the 1990s, North Korea continued to see negative economic growth until 1998, and from 1999, it was on its way towards economic recovery. North Korean trade has followed likewise. Its trade figures decreased from 1991 to 1998 and then started to increase from 1999. In 2010, North Korea's trade volume recovered to its 1990 level. Although North Korea has had the most autarkic economy in the world, the country and its regime cannot survive without economic relations with other countries.

Former socialist economies have been participating in international division of labor since their adoption of transition policies. After the severe production decline in the early 1990s, the countries were able to recover, increasing production, trade volume and investment. Their economic transition process has shown a significant correlation between production and trade. This relationship between trade and economic growth has been confirmed by many studies.<sup>1</sup> Participation in international trade has become one of the key factors in economic growth, not only for developed economies but also for emerging and least developed economies. This driving component now stands true for transition economies as well.

This paper examines whether or not North Korea's trade recovery is based on changes in economic fundamentals as demonstrated by other transition economies. The research measures North Korea's comparative advantage using Bela Balassa's indices of revealed comparative advantage (RCA) to measure its structural change in trade. The revealed comparative advantage of a nation is measured by the relative weight of a percentage of total export of commodity's in a nation over the percentage of world export in that commodity developed by Balassa(1965). Because North Korea does not publish data and statistics, this research uses the so-called, mirror statistics, which collects United Nations trade data reported by its trading partners.

This paper analyzes North Korea's trade patterns and comparative advantage from 2000 to 2010 and makes observations of any consistent and visible changes in international competitiveness in the period of trade increase in the 2000s. It also pays attention to the question of whether or not North Korea's economic reforms thus far have changed the trade structure. The main research focus, however, lies in whether North Korea's trade is being driven by market mechanisms or by political negotiation with trading partners. As is commonly known, North Korea does not have a diversified set of trading partners. China occupied over 80% of North Korea's total trade in 2011. If the trade increase turns out to be based solely on political negotiation, trade would fail to have significant implications for North Korea's economic development.

The paper consists of three main parts following the introduction. It will first provide a review of North Korea's current trade structure. Then it will calculate and analyze the RCA indices of North Korean trade to the world market and the EU. Subsequently, it will explain the implications of the RCA indices and the possible role of the EU in North Korea's reform policies. Finally it will draw conclusions from gathered implications.

## 2. NORTH KOREAN TRADE: STRUCTURE AND TREND

### 2.1. TRADE

Upon the demise of the socialist bloc, the volume of North Korean trade has decreased continuously since 1991. Due to the disintegration of the soviet bloc, North Korea lost its trading partners and following economic collapse, has reduced its production potential as well as trade capacity. North Korea was not able to stop the trend of diminishing foreign trade. In 1998, the North Korean foreign trade volume plummeted to \$1,442 billion, the lowest level since 1990. The decreasing trend has reversed in 1999. Expanded inter-Korean economic cooperation through the Mt. Kumkang tourism project and foreign aid has turned the trend around, thanks to increased foreign currency and input for production.

In 2010, after two decades, North Korea finally recovered its 1990 level of foreign trade. Trade expansion has been headed principally through imports while exports have increased more slowly. However, both imports and exports increased consistently since 1999, with the exception of a few years due to political instability on the Korean peninsula. At this point the trade volume completes the typical U-curve, which implies the economy overcomes difficulties of structural changes. Then transition economies approached the J-curve, which appears commonly in most transition economies, accompanied by the J-curve in production.<sup>2</sup>

<Table 1> shows North Korea's trade development over 20 years. Important characteristics can be summarized as follows. First, North Korea has run a trade deficit over the entire period. Imports exceeded exports and recorded a huge negative trade balance. Second, North Korea's foreign trade has stopped declining and is on the way to recovery. The volume of exports and imports are experiencing an increasing trend. Third, North Korean trade is becoming increasingly dependent on foreign economies such as China, Germany, Russia, India and so on. North Korea's trade volume has now surpassed its 1990 level and even posted a record high in 2010. The current North Korean economy may be increasingly engaged in international trade.

**<Table 1> Trends in North Korean Foreign Trade**

(Units: USD Millions, %)

	Export		Import		Total Trade		Trade Balance
	Amount	Increase%	Amount	Increase%	Amount	Increase%	Amount
1990	1,733	—	2,437	—	4,170	—	— 704
1991	945	— 45.5	1,639	— 32.7	2,584	— 38.0	— 694
1992	933	— 1.3	1,622	— 1.0	2,555	1.1	— 689
1993	990	6.1	1,656	2.1	2,646	3.6	— 666
1994	858	— 13.3	1,242	— 25.0	2,100	— 20.6	— 384
1995	736	— 14.2	1,316	6.0	2,052	— 2.3	— 580
1996	727	1.2	1,250	— 5.0	1,977	— 3.7	— 523
1997	905	24.5	1,272	1.8	2,177	10.1	— 367
1998	559	— 38.2	883	— 30.6	1,442	— 33.8	— 324
1999	515	7.9	965	9.3	1,480	2.6	— 450
2000	556	8.0	1,413	46.4	1,969	33.0	— 857
2001	650	16.9	1,620	14.6	2,270	15.3	— 970

2002	735	13.1	1,525	- 5.9	2,260	- 0.4	- 790
2003	777	5.5	1,614	5.9	2,391	5.8	- 837
2004	1,020	31.3	1,837	13.8	2,857	19.5	- 817
2005	998	- 2.1	2,003	9.1	3,002	5.1	- 1,005
2006	947	- 5.2	2,049	2.3	2,996	- 0.2	- 1,102
2007	918	- 3.0	2,022	- 1.3	2,941	- 1.8	- 1,104
2008	1,130	23.0	2,686	32.7	3,816	29.7	- 1,556
2009	1,063	- 6.0	2,351	- 12.4	3,414	- 10.5	- 1,288
2010	1,513	42.4	2,660	13.2	4,174	22.2	- 1,147

Source: KOTRA

## 2.2 COMPOSITION OF TRADING GOODS

### (1) Export Products

North Korea's largest export sector in 2010 was mineral products, worth \$695.8 million. This sector occupied 46% of total exports. The export of mineral products since has been steadily increasing. China is a major importer.<sup>3</sup> China's development policy and high economic growth has increased the country's demand for natural resources. North Korea, on the other hand, does not have other sellable goods to sell to finance its increasing import demand. The mineral production capacity has improved due to the 2002 reform that spurred the purchase of new mining equipment and the provision of strong incentives for mining workers. Thus, exports in mineral products have been able to consistently increase.

The second largest export sector is metalloids. Metalloid products are used in natural resource-intense industries. North Korea's two largest export sectors sell resource-intensive goods. North Korea has an increasingly strong incentive to export resource-intensive products, especially because the price of natural resources has risen greatly in recent years.

The third largest export industry is textiles. Textiles have been one of North Korea's main exports. Even though textile products experience ups and downs, this sector remains on the list of the top three exports. Textiles belong to the labor-intensive industry. North Korea has a strong comparative advantage in this area due to its abundantly endowed labor.

< Table 2> North Korea's Main Export Products

(Units: USD Thousands, %)

	HS Code	2009		2010		Increase
		Amount	Proportion	Amount	Proportion	
Animal Products	HS 01~05	59,427	5.6%	65,207	4.3%	9.7%
Plant Products	HS 06~14	27,687	2.6%	21,121	1.4%	- 23.7%
Mineral Based Products	HS 25~27	445,727	41.9%	695,859	46.0%	56.1%
Plastic, Chemicals	HS 28~40	72,231	6.8%	88,440	5.8%	22.4%
Wood Products	HS 44~46	9,602	0.9%	5,965	0.4%	- 37.9%
Textile Products	HS 50~63	149,470	14.1%	229,956	15.2%	53.6%

Precious Metals	HS 71	24,738	2.3%	4,145	0.3%	- 83.2%
Metalloids	HS 72~83	162,336	15.3%	264,239	17.5%	62.8%
Machinery · Electronics	HS 84~85	54,560	5.1%	98,249	6.5%	80.1%
Others	HS Others	57,008	5.4%	40,451	2.7%	- 29.0%
Total		1,062,786	100%	1,513,632	100%	42.4%

## (2) Import Products

North Korea's major imports include mineral based products, machinery and electronics and textile products. Energy-producing, mineral-based products have emerged as the largest imports in recent years. North Korea has increased its import of mineral-based products due to energy shortage, which in the past has proved to be the biggest barrier to North Korea's economic growth. North Korea has now expanded its source of energy imports. Presently, energy exporters to North Korea include China, Russia, Singapore, Thailand, Greece and Iran.

The second largest import sector is machinery and electronics. North Korea places emphasis on the improvement of production facilities. Old equipment cannot be used because of low productivity and energy inefficiency.

The third largest import goods are textile products. Textiles occupy a large proportion in exports as well as in imports. Textile products are produced mainly by North Korea's commission-based processing trade. Even though the trade volume varies somewhat according to the political situation, textiles have firmly maintained its position because this sector coincides with North Korea's comparative advantage in cheap labor.

**< Table 3> North Korea's Main Import Products**

(Units: USD Thousands, %)

	HS Code	2009		2010		Increase
		Amount	Proportion	Amount	Proportion	
Animal Products	HS01~05	39,900	1.7%	30,781	1.2%	1.8%
Plant Products	HS06~14	155,064	6.6%	167,746	6.3%	1.8%
Oil-Based & Crude Food Products	HS15~24	220,938	9.4%	154,837	5.8%	- 29.9%
Mineral Based Products	HS25~27	352,225	15.0%	547,678	20.6%	55.5%
Chemical Products	HS28~38	193,470	8.2%	175,551	6.6%	- 9.3%
Plastic Goods	HS39~40	113,426	4.8%	144,605	5.4%	27.5%
Textile Products	HS50~63	362,538	15.4%	328,138	12.3%	- 9.5%
Metalloids	HS72~83	204,831	8.7%	178,280	6.7%	- 13.0%
Machinery, Electronics	HS84~85	344,829	14.7%	482,668	18.1%	40.0%
Automobiles	HS86~89	124,345	5.3%	212,773	8.0%	71.1%
Others	HS Other	239,466	10.2%	237,717	8.9%	- 0.7%
Total		2,351,032	100%	2,660,774	100%	13.2%

### 2.3. NORTH KOREA'S TRADING PARTNERS

The disintegration of the socialist bloc majorly shifted the composition of North Korea's trading partners. Firstly, trade with Russia decreased drastically. North Korea's trade with Russia, its biggest trading partner, fell from 53% of total trade in 1990 to 14% in 1991. This trade collapse between North Korea and Russia resulted from the elimination of a friendly price system among socialist countries and a change in the payment system, moving away from a clearing system to hard currency payment. A similar trade collapse occurred with other trading partners from the former socialist bloc.

After the trade collapse with ex-socialist countries, North Korea has made great efforts in finding new trade partners and in expanding its trade volume. Along with North Korea's trade expansion with China, Japan, South Korea and other countries, North Korea's top ten trading partners now include China, Russia, Germany, India, Thailand, Singapore, Bangladeshi, Hong Kong, Italy and Mexico.<sup>4</sup>

The most prominently noted characteristic among the trading partners is the dominant trade weight of China, North Korea's number one trading partner. Sino-DPRK trade has risen steadily since the collapse of the soviet bloc. China has become the main window into North Korea's economic relations with the outside world after the restructuring of foreign trade. China's imports from and exports to the DPRK have increased significantly over the past decade. In 2010, China occupied 83% of the total trade volume. China provided 85.6% of all North Korean imports and received 78.4% of North Korea's exports. The trade between the two countries increased by 22.6% comparing to the level of 2009. Bilateral trade is, however, highly imbalanced as China's surplus exceeded \$1 billion in 2010. Sino-DPRK trade explains the main trend of North Korea's total trade.

Recently Russia has also returned as North Korea's second largest trading partner, steadily expanding its share despite its currently holding of just 2.6% of total trade volume. Among European countries, Germany is the DPRK's third largest trading partner.<sup>5</sup> Other major partners are comprised of Asian countries such as India, Thailand, Singapore, etc.

**<Table 4> North Korea's Ten Largest Trading Partners**

(Units:USD Thousands, %)

Country	Export		Import		Total Trade		Proportion	
	2009	2010	2009	2010	2009	2010	2009	2010
China	793,048	1,187,861	1,887,686	2,277,816	2,680,734	3,465,67	78.5%	83.0%
Russia	20,628	26,960	41,060	83,619	61,688	110,579	1.8%	2.6%
Germany	26,798	34,368	43,177	24,579	69,975	58,947	2.0%	1.4%
India	8,108	32,976	52,331	25,500	60,439	58,476	1.8%	1.4%
Thailand	14,017	21,527	30,273	29,759	44,290	51,286	1.3%	1.2%
Singapore	1,860	720	55,385	47,777	57,245	48,497	1.7%	1.2%
Bangladesh	28,730	36,788	7,277	97	36,007	36,885	1.1%	0.9%
Hong Kong	29,974	12,358	26,331	18,476	56,305	30,834	1.6%	0.7%
Italy	1,219	1,001	23,106	24,728	24,325	25,729	0.7%	0.6%
Mexico	4,615	10,723	927	14,723	5,542	25,446	0.2%	0.6%
10 countries Total	928,997	1,365,282	2,167,553	2,547,074	3,096,550	3,912,356	90.7%	93.6%

Others	133,789	148,349	183,479	113,700	317,268	262,049	9.3%	6.4%
Total	1,062,786	1,513,631	2,351,032	2,660,774	3,413,818	4,174,405	100%	100%

### 3. NORTH KOREA'S REVEALED COMPARATIVE ADVANTAGE (RCA)

#### 3.1. NORTH KOREA'S EXPORT RCA TO THE WORLD

North Korea has undergone significant changes in trade performance since 1990. However, it is not clear whether or not the North Korean economy follows the normal transition route. After the liberalization of trade, transition economies experienced fundamental changes in trade structure. The countries initially exported resource-intensive goods, followed by labor-intensive goods using standardized technology. After the countries accumulated capital and technology, they started to export technology-intensive goods.

A well-known tool for analyzing trade patterns is the revealed comparative advantage (RCA) index. The concept of revealed comparative advantage is based on the traditional trade theory, particularly the comparative advantage theory. RCA index shows the competitiveness of a country in a specific sector comparing to another country. However, the index finds also structural change in trade reflecting changes of competitiveness in sectors intensive in natural resources, capital and unskilled labour. Many studies have adopted RCA to measure structural changes in former socialist countries.<sup>6</sup> This study tries to find out evidence whether possible restructuring is giving rise to changes in North Korea's comparative advantage. The study looks at the trade growth and evolving trade patterns to assess structural change in production. The RCA index is formulated by Balassa (1965) and defined as

$$X_{ik} = \frac{\sum_{n \in G_i} X_{nk} / \sum_{n=1} X_{nk}}{\sum_{n \in G_i} \sum_{t=1} X_{nt} / \sum_{n=1} \sum_{t=1} X_{nt}}$$

$X_{ik}$  = RCA index as a national export share of  $i$  industry in relation to the world export share of the same industry.

If this index is bigger than 1, the country has a comparative advantage.

$\sum_{n \in G_i} X_{nk}$  = country  $k$ 's export volume of  $i$  industry products.

$\sum_{n=1} X_{nk}$  = total export volume of country  $k$

$G_i$  = Products of  $i$  industry

$\sum_{n \in G_i} \sum_{t=1} X_{nt}$  = total export of  $i$  industry products of all related countries.

$\sum_{n=1} \sum_{t=1} X_{nt}$  = total export volume of all the related countries.

#### Data

Because North Korea has not published its foreign trade data since the mid-1960s, an alternative way is to compile trade data from North Korea's trading partners. This method of collecting data from trading partners is called mirror statistics. Mirror statistics has been used in analyzing North Korean trade patterns. This study uses the reports of North Korea's trading partners to the United Nations, Comtrade of the United Nations Statistical

Division (UNSD), as its primary data source. The United Nations publishes detailed trade data and so this study uses trade data at the three-digit level of the UN SITC, Revision 3, with the given timeframe from 2000 to 2010.

### Commodity Categorization

Several studies have measured transition progress through the assessment of the high-tech product share in total exports. This similar evaluation of trade performance has been undertaken for other emerging economies or newly-industrialized, Asian economies. Drabek and Smith (1995), Guerrieri (1998), and Movshuk (2001) have attempted to do this. They have classified commodities into different categories according to technological content and have calculated the RCA of the aggregate goods to analyze trade patterns. One of the major problems of these studies is the categorization of the commodities according to technological content, “because the correlation across goods of the intensity of factor use is not unity.”<sup>7</sup>

This paper, however, adopts the classification used by Lim (1997), derived from Hufbauer, G.C. and Chilas, J. G. (1974). They have divided the commodities into three categories corresponding to the nature and importance of natural resources for production and technological content. They categorize commodities into Ricardo goods, Heckscher-Ohlin goods, and Product-cycle goods.<sup>8</sup>

- Ricardo goods are goods using natural resources in production. It usually applies to developing countries holding vast resources but low technological advancement.

Ex) Food, wood, fibers, minerals, paper, oils, raw fuels, etc.

- Heckscher-Ohlin goods are goods using standard technology. It indicates midlevel technology.

Ex) Beverages, tobacco, glass, pottery, locomotives, books, jewelry, clothing, etc.

- Product-cycle goods are goods using advanced technology. It applies to developed and technologically advanced countries.

Ex) Chemicals, medicines, explosives, machinery, instruments, aircraft, munitions, etc.

<Table5> lists the commodities according to the definition of Hufbauer and Chilas (1974) to create aggregate goods. North Korea's RCA was calculated based on this classification.

**<Table 5> Grouping for Revealed Comparative Advantage**

Name of Group	Source	Property Group	of	Commodities in Group	SITC (Rev.3)
1. Ricardo Goods	Hufbauer & Chilas (1974)	Goods using natural resources in production		Food, wood, fibers, minerals, paper, non-ferrous metals, oils, ores, raw fuels	011 012 016 017 022 023 024 025 041 042 043 044 045 046 047 048 054 056 057 058 061 071 072 074 075 121 247 248 251 261 263 268 272 274 281 283 284 285 287 289 321 322 325 333 342 343 344 345 411 421 422 431 667 681 682 683 684 685 686 687 689

2. Heckscher-Ohlin Goods	Hufbauer & Chilas (1974)	Goods using standard technology	Beverages, tobacco, cement, floor coverings, glass, pottery, ferrous metals, cars, metal products, locomotives, ships, domestic appliances, books, furniture, clothing, jewelry, stationary	111 112 122 273 533 551 553 554 611 612 613 621 625 629 651 652 653 654 656 657 658 659 661 662 664 665 666 671 672 673 674 675 676 677 678 679 691 692 693 694 695 696 697 699 761 762 764 775 781 782 783 784 785 786 791 811 812 813 821 831 841 842 843 844 845 846 848 851 892 893 894 895 897
3. Product-cycle Goods	Hufbauer & Chilas (1974)	Goods using advanced technology	Chemicals, medicines, plastics, dyes, fertilizers, explosives, machinery, aircraft, instruments, clocks, munitions	511 512 513 514 515 516 522 523 524 525 532 541 542 562 571 572 573 574 575 579 581 582 583 593 711 712 713 714 716 718 721 722 723 724 725 726 727 728 731 733 735 737 751 752 759 771 772 773 774 776 778 792 871 872 873 874 881 882 884 885 891

Sources: Lim(1997:102); Lee(1996: 20-3)

### Results

The RCA indices of aggregate goods show the biggest changes in Ricardo goods. North Korea did not demonstrate any competitiveness in Ricardo goods in 2000, as seen in its RCA index of 0.18. Since then, it has increased consistently and has acquired comparative advantage since 2004. The RCA index of Ricardo goods exceeded 5 in 2010. North Korea's competitiveness in Ricardo goods have been strengthened largely in recent years.

These changes in RCA indices of Ricardo goods imply the following:

First, North Korea's export in Ricardo goods increases more than that of any other product. This is most likely inevitable for North Korea since it cannot invest in producing other products. Additionally, due to a rich endowment in natural resources, the North is able to increase its exports in Ricardo goods. <Table 6> reveals that the proportion of Ricardo goods in total trade reached 42% in 2010, an increase from 33% in 2009.

Secondly, North Korea must have expanded the production capacity of its resource-intensive goods. In the 1990s, due to energy shortage and outdated production facilities, the DPRK could not even increase production in Ricardo goods. However, in recent years the North has largely expanded export volume of Ricardo goods and has recorded a high growth rate. This reflects the improvement in North Korea's production facility as well as increased energy provision.

Thirdly, North Korea uses the export of Ricardo goods as an instrument for economic recovery. Rapid growth of exports enables the North to buy more goods needed for investment as well as for consumption. Increased energy provision and consumption goods production were mainly attained through the profits from higher exports of Ricardo goods.



The RCA index of Heckscher-Ohlin Goods (HOG) has not seen much change. It has oscillated between 0.75 and 1.22 in the last eleven years. After the RCA index of Heckscher-Ohlin goods reached 1.22 in 2000, it has shown ups and downs. The export volume of this category also experienced volatile changes, failing to show a consistent trend. The proportion of Heckscher-Ohlin good in total exports has varied as well.

The RCA index of Heckscher-Ohlin goods shows that the North Korean economy has not yet established a competitive production capacity using standardized technology. Even after the year 2000, North Korea's production of Heckscher-Ohlin good has decreased. The RCA index moves along the benchmark 1, showing neither a strong increase nor a big decrease. North Korea has the potential to expand the export of this good due to relatively cheap labor costs. However, North Korea cannot exercise this potential because of energy shortage and the lack of new investments. It is possible that the increasing wage level in China may lead to bigger FDIs in North Korea and higher exports of this category. However, at the moment the potential remains merely as a possibility.

North Korea's RCA index of Product-cycle goods shows a significant comparative disadvantage throughout the 2000s. The index has moved within a narrow band, between 0.5 and 0.8, showing a decreasing trend since 2006. Export volume of Product-cycle goods in 2010 occupied a mere 13.4% of North Korea's total exports.

North Korea does not have any experience in being competitive in industries using advanced technologies. North Korea also does not have the capacity to expand the production of Product-cycle goods. The North does not possess a favorable condition to construct new industries with advanced technologies with its current stage of its economic development, level of technology, financial condition and international network. The RCA index shows that the North Korean government itself does not have the ambition to develop the Product-cycle goods industry. Considering its current economic conditions, North Korea's weakness in Product-cycle goods will persist over an extended period of time.

**<Table 6> North Korea's Export RCA to the World**

<Ricardo Goods>

Year	North Korea's Export Value to World by Commodity	North Korea's Total Export value to World	World's Total Export Value by Commodity	World's Total Import Value	North Korea Export RCA
2000	69,315,828	1,158,766,417	2,064,950,000,000	6,325,130,000,000	0.183229936
2001	74,780,428	980,809,460	976,693,000,000	6,144,590,000,000	0.479665116
2002	85,889,919	1,038,307,576	996,205,000,000	6,403,720,000,000	0.531740559
2003	114,550,112	988,124,283	1,198,360,000,000	7,447,370,000,000	0.720442912
2004	222,028,724	1,308,859,727	1,152,642,000,000	9,073,350,000,000	1.335332077
2005	317,507,394	1,415,805,819	1,901,410,000,000	10,728,000,000,000	1.265298933
2006	345,686,205	1,891,860,023	1,137,326,947,976	11,651,066,239,096	1.872
2007	412,141,369	1,721,714,724	1,665,809,724,619	13,239,078,323,180	1.902
2008	496,698,709	2,261,507,844	1,369,979,298,414	15,299,037,663,780	2.453
2009	479,354,366	1,427,930,192	1,080,607,154,299	11,853,436,451,346	3.682
2010	751,559,273	1,741,321,095	1,016,598,441,792	12,044,743,365,709	5.114

<Heckscher-Ohlin Goods>

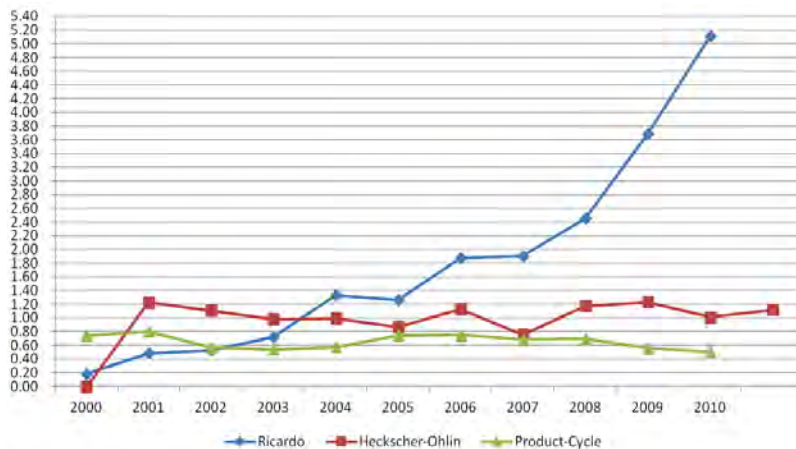
Year	North Korea's Export Value to World	North Korea's Total Export value to World	World's Total Export Value by Commodity	World's Total Import Value	North Korea Export RCA
2000	455,924,210	1,158,766,417	2,032,200,000,000	6,325,130,000,000	1.224615531
2001	354,958,854	980,809,460	2,018,990,000,000	6,144,590,000,000	1.101417847
2002	340,294,707	1,038,307,576	2,133,430,000,000	6,403,720,000,000	0.983746291
2003	321,111,714	988,124,283	2,444,704,000,000	7,447,370,000,000	0.989968155
2004	367,258,550	1,308,859,727	2,925,940,000,000	9,073,350,000,000	0.870123821
2005	481,210,923	1,415,805,819	3,232,500,000,000	10,728,000,000,000	1.128007573
2006	386,984,402	1,891,860,023	3,156,862,753,225	11,651,066,239,096	0.755
2007	636,086,330	1,721,714,724	4,172,162,297,461	13,239,078,323,180	1.172
2008	821,208,699	2,261,507,844	4,529,248,365,650	15,299,037,663,780	1.227
2009	425,893,964	1,427,930,192	3,503,556,689,214	11,853,436,451,346	1.009
2010	536,221,320	1,741,321,095	3,320,651,741,193	12,044,743,365,709	1.117

<Product-Cycle Goods>

Year	North Korea's Export Value to World	North Korea's Total Export value to World	World's Total Export Value by Commodity	World's Total Import Value	North Korea Export RCA
2000	279,758,361	1,158,766,417	2,048,400,000,000	6,325,130,000,000	0.745490071
2001	251,251,824	980,809,460	1,963,370,000,000	6,144,590,000,000	0.801706374
2002	187,408,881	1,038,307,576	2,040,130,000,000	6,403,720,000,000	0.566550513
2003	169,533,412	988,124,283	2,355,010,000,000	7,447,370,000,000	0.542567663
2004	235,284,319	1,308,859,727	2,851,330,000,000	9,073,350,000,000	0.572031651
2005	311,416,082	1,415,805,819	3,164,520,000,000	10,728,000,000,000	0.745672735
2006	416,875,200	1,891,860,023	3,425,585,496,805	11,651,066,239,096	0.749
2007	351,644,882	1,721,714,724	3,972,984,848,611	13,239,078,323,180	0.681
2008	438,353,613	2,261,507,844	4,274,740,640,993	15,299,037,663,780	0.694
2009	232,655,443	1,427,930,192	3,471,985,382,291	11,853,436,451,346	0.556
2010	234,932,823	1,741,321,095	3,210,634,665,456	12,044,743,365,709	0.506

Source: COM Trade, Own Calculation.

<Figure 1> North Korea's Export RCA to the World



Source: COM Trade, Own calculation.

<Figure 1> reveals North Korea's export pattern more clearly. The export of Ricardo goods has consistently increased while the export of Heckscher-Ohlin goods and Product-cycle goods remains relatively unchanged. North Korea's export recovery shown in <Table 1> relies mainly on the export increase of Ricardo goods.

The principal reason for this increase in export was due to China. In 2010, North Korea's main exports to China included mineral fuel, such as coal, ores, woven apparel, iron and steel, fish and seafood, and salt/sulfur/earths/stone. In recent developments, North Korea has increased exports in primary products, including fish, shellfish and agro-forest products, as well as mineral products, such as base metallic minerals.

North Korea's export increase depends on China because China provides energy and equipment to produce these export goods. China's major exports to North Korea include mineral fuels and oil, machinery, electrical machinery, vehicles, knit apparel, plastic, iron and steel. Pyongyang reportedly has imported aquaculture technology mainly from China to increase production of cultivated fish, and agricultural equipment to increase output of grain and livestock. It also has imported equipment for its coal and mineral mines. Much of the coal and mineral exports have resulted from partnering with Chinese firms, through which the Chinese provide modern equipment in exchange for a supply of the product being mined or manufactured.<sup>9</sup> China is also a major source for North Korean petroleum imports. In recent years, China has directly cultivated North Korea's mining sector through direct investments (FDI) in North Korea. In 2008, the total foreign direct investment to the DPRK, as reported to the United Nations, amounted to \$44 million, of which China supplied \$41.2 million. Chinese companies have made major investments aimed at developing mineral resources located in the northern region of the DPRK.<sup>10</sup>

### **3.2. NORTH KOREA'S EXPORT RCA TO THE EU**

#### RCA Indices

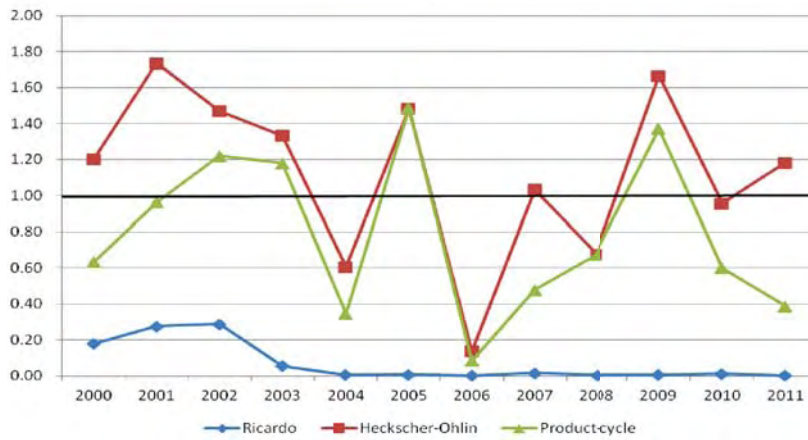
In 2010, the EU, including CIS countries as a region, occupied 6% of North Korea's total trade volume while Asia accounted for 90%. As shown in <Table 8>, the trade volume reached \$226.5 million with \$103.5 million of exports to the EU and \$162.9 million of imports from the EU. North Korea's major export items to the EU consist of clothes, machinery, steel products, soil, salt, and soap. North Korea's major import items from the EU consist of machinery, medical supplies, measuring instruments, optical instruments, precision instruments, electronics and electric supplies.

<Figure 2> shows North Korea's export competitiveness in the EU market. <Figure 2> shows the opposite trend from <Figure 1>, which reveals competitiveness in the world market. In the world market, North Korea demonstrates strong competitiveness in Ricardo goods, while its RCA to the EU approaches zero. On the other hand, North Korea's RCA has a better standing in Heckscher-Ohlin goods exports; although the RCA strongly oscillates between 0.2 and 1.8, it generally remains above 1. The RCA of Product-cycle goods moves between the band of 0.2 and 1.5, and only four years of the eleven, showed an RCA value greater than 1.

This figure implies North Korea does not export natural resources to EU countries or that they export a small amount. This is most likely because China imports almost all the Ricardo goods from North Korea. China

has participated actively in developing natural resources directly due to the lack of capacity of North Korea to develop its resources. "Chinese investment in the DPRK has been based on combining China's capital and skills with underused resources in North Korea to generate legitimate economic activity that benefits both sides."<sup>11</sup> The imposition of economic sanctions by UN security Council Resolutions 1718 and 1874 shrank North Korea's market in the EU as well, while China did not pay much attention to the sanctions.<sup>12</sup> High transportation costs for natural resources may be another reason for the low volume of Ricardo goods' exports from the DPRK to the EU.

<Figure 2> North Korea's Export RCA to the EU



North Korea has a relatively better RCA index for Heckscher-Ohlin goods exports to the EU. Textiles take up the biggest proportion of DPRK exports to the EU because of the EU's relaxed regulation concerning textile imports from North Korea, which was introduced in 2001. Although the EU countries do not import raw natural resources, they do import manufactured goods that are mostly composed of North Korea's natural resources. That is, the EU imports resources after primary processing to make use of North Korea's resources as well as cheap labor. <Table 7> shows the list of products for which North Korea shows competitiveness in the EU market. All the products on the list are manufactured goods that have used simple technology. This result is understandable in consideration of high wage levels in Europe.

North Korea will continue to have a comparative advantage in exports of Heckscher-Ohlin goods to the EU market. However, even Ricardo goods may have to be processed once in order to save transportation and labor costs. That means that North Korea's export RCA composition will differ according to the destination. North Korea's current RCA is determined principally by the Chinese market. The Chinese market lies next to North Korea's and the wage level in China greatly differs with that of the DPRK. All these have resulted in North Korea's RCA structure as shown in <Figure 1>.

**<Table 7> North Korea's Products with Competitiveness in EU (RCA>1)**

Sector (SITC 1-digit)	Code / Commodity
Beverages and tobacco	111 NON-ALCOHOL.BEVERAGE,NES
5. Chemicals and related products	522 INORGANIC CHEM.ELEMENTS 553 PERFUMERY,COSMETICS,ETC.
6. Manufactured goods classified chiefly by material	621 MATERIALS OF RUBBER 671 PIG IRON,SPIEGELEISN,ETC 691 METALLIC STRUCTURES NES 693 WIRE PRODUCTS EXCL.ELECT 694 NAILS,SCREWS,NUTS,ETC
7. Machinery and transport equipment	714 ENGINES,MOTORS NON-ELECT 723 CIVIL ENGINEERING EQUIPT
8. Miscellaneous manufactured articles	841 MENS,BOYS CLOTHNG,XKNIT 842 WOMEN,GIRL CLOTHNG,XKNIT 893 ARTICLES,NES,OF PLASTICS

Trade between the EU and the DPRK does not hold as important an economic significance for EU countries. Among the EU countries, Germany has had traditionally strong economic ties with the DPRK. Even though Germany accounts for 41.8% of the total EU-DPRK trade in 2010, the volume was worth a mere \$58.9 million, taking up only 1.4% of North Korea's total trade (Table 9). Other than Germany, only Italy, the Netherlands and Denmark have recorded a trade volume exceeding \$10 million in 2010. The EU-DPRK trade volume has fluctuated between \$200 million and \$400 million in the last two decades. The volume is negligible to EU economies, even as the EU stands as North Korea's second largest trade partner, occupying 6% of North Korea's total trade.

Despite its small trade volume, the EU is the most important trading partner for North Korea after China. The EU provides North Korea a market with favorable conditions. European companies bring new investment and technology.<sup>13</sup> Although these investments do not have significant meaning in magnitude, they introduce new technology and new product-widening bottlenecks in North Korean society. Therefore, North Korea's export RCA indices to the EU show higher figures for Heckscher-Ohlin goods and Product-cycle goods.

**< Table 8> North Korea's Trade by Region**

(Units: USD Thousands, %)

	Export			Import			Total Trade			Proportion
	2009	2010	Increase	2009	2010	Increase	2009	2010	Increase	
Asia, Pacific	900,206	1,331,407	47.9%	2,096,471	2,433,245	16.1%	2,996,677	3,764,652	25.6%	90%
Europe, CIS	88,783	103,547	16.6%	143,460	162,972	13.6%	232,243	266,519	14.8%	6%
America	60,531	64,994	7.4%	103,832	61,295	- 41.0%	164,363	126,289	- 23.2%	3%
Middle East Africa	13,266	13,683	3.2%	7,269	3,261	- 55.1%	20,535	16,944	- 17.5%	Under 1%
Total	1,062,786	1,513,631	42.4%	2,351,032	2,660,773	13.2%	3,413,818	4,174,405	22.3%	100%

**<Table 9> North Korean Trade with European Countries**

(Units: USD Thousands, %)

Country	Export		Import		Total Trade		Proportion	
	2009	2010	2009	2010	2009	2010	2009	2010
Germany	26,798	34,368	43,177	24,579	69,975	58,947	45.5%	41.8%
Italy	1,219	1,001	23,106	24,728	24,325	25,729	15.8%	18.3%
Netherlands	21,804	21,779	5,302	2,124	27,106	23,903	17.6%	17.0%
Denmark	272	553	4,862	11,650	5,134	12,203	3.3%	8.7%
France	511	897	2,691	2,968	3,202	3,865	2.1%	2.7%
Belgium	706	1185	4826	2044	5,532	3,229	3.6%	2.3%
Greece	1,166	1,231	141	1,420	1,307	2,651	0.8%	1.9%
UK	1,405	2,503	166	88	1,571	2,591	1.0%	1.8%
Austria	306	1,382	1,482	536	1,788	1,918	1.2%	1.4%

#### 4. NORTH KOREA'S RCA CHANGES AND THE ROLE OF EU-DPRK TRADE

##### 4.1. NORTH KOREA'S RCA ON EU MARKET

After the collapse of North Korea's economy in the beginning of the 1990s, North Korea recovered its trade volume in 2010. The changes in trade volume and trade pattern have been used as an alternative indicator to show the economic restructuring in transition economies. North Korea's RCA indices show that its trade is based on market mechanisms. North Korea sells Ricardo goods mostly because the country is abundantly endowed with natural resources. The rapidly increasing RCA index for Ricardo goods implies that the natural resources of North Korea contributed to the quick expansion of exports in recent years.

Even though trade volume recovered to the level before the collapse, the GDP has not yet recovered to the 1989 level. This is because the manufacturing sector has not been reconstructed. The money earned through the extraction of minerals has not been channeled sufficiently into the manufacturing sector. Improvement of economic fundamentals presupposes the restructuring of the manufacturing sector. If North Korea continues to export Ricardo goods without the improvement in manufacturing, the North will catch the Dutch-disease and in turn, deter industrial restructuring. The existing macroeconomic instability and inflation pressure will grow as well. China's monopolistic demand may distort North Korea's industrial restructuring, moving it towards excessive growth in the production of Ricardo goods.

Trade relations between the EU and North Korea show a different pattern in North Korea's export from that of total exports. Heckscher-Ohlin goods have their strengths and even the Product-cycle goods have a better standing in trade with the EU compared to trade with other regions. European companies' FDI has expanded the bottleneck in some industries, bringing new technology and new products into North Korea. These are reflected in North Korea's RCA indices to the EU.

Despite its small trade volume, the EU is significant in providing a source for new technology and production equipment to North Korea. The EU provides a favorable market and acts as a link to the western world. The EU does not have serious political tensions with the North, contrary to the latter's strained relationship

with the United States and Japan. The EU has a wide network of bilateral diplomatic relations with Pyongyang. The former socialist countries in Eastern Europe still have good relations with technocrats in the DPRK.<sup>14</sup> All these favorable conditions for economic cooperation may have already been reflected somewhat in the RCA indices. Due to sanction measures and political conflict, the United States, Japan, and even South Korea do not have open access to North Korea while the EU does not bear those restrictions. Every small investment from the EU may influence North Korea's industrial structure as well as domestic society. The EU may capitalize on this advantage to open up new markets and lead the North to international division of labor.

#### **4.2. EU-DPRK TRADE AND ITS IMPLICATIONS**

In 2001, the EU had set up an active engagement plan in North Korea. According to the EU's 2002 North Korea Country Strategy Paper (CSP)<sup>15</sup>, the EU had set aside 35 million Euros for technical assistance projects until 2006. In addition, the EU's National Indicative Program (NIP) delineated concrete framework and objectives for technical assistance projects in North Korea. The CSP and NIP regarded North Korea's economy to be similar to the Eastern European economies due to the highly industrialized economic structure. The EU's aid programs and technical assistance accordingly focused on North Korea's industrial sector such as coal and heavy industries. The EU defined three main cooperation fields such as 'institutional support and capacity building', 'sustainable development and use of natural resources including access to sustainable energy sources,' and 'sustainable transport sector and rural development.'<sup>16</sup>

At that time, North Korea was willing to accept the EU's financial aid as well as technical assistance for economic and structural reforms. Pyongyang and Brussels had exchanged delegations and had prepared to implement their programs. All the plans for technical assistance and cooperation between the EU and North Korea came to a halt after the detection of North Korea's nuclear program in 2002. Following the detection, missile launches and nuclear tests have proceeded to take place, bringing about the lost opportunity to implement assistance programs delineated in the CSP and NIP. Since the DPRK first made its nuclear test in 2006, EU has followed the UN resolution regulating economic exchanges with North Korea.

However, EU has not cut off the humanitarian aid to the DPRK even if the volume has decreased. EU maintains diplomatic ties with the country. European Parliament keeps regular parliamentary exchanges. EU member countries also continue their diplomatic relation with DPRK even after the nuclear tests and missile launch. France has newly opened its cooperation office in Pyongyang in October 2011. Although EU had to give up its active plan to bring the North to international society, still EU and European countries are the last window to the western society for North Korea.

It is clear that the EU was prepared to cooperate with North Korea and to provide technical assistance to help the North transition. Considering the EU's economic and political relationship with North Korea, the EU could take on the role to help North Korea reform its economy and society. As the Council has repeatedly declared in the past, the EU would be able to contribute to reduce tensions between the two Koreas and to enhance the role of the Union in support of peace, security and freedom on the Korean peninsula.<sup>17</sup> Even though the EU's economic assistance would be of moderate scale, the parallel assistance of both the EU and its member

countries would be a great help for North Korea especially in this current sanction period. The most desirable way to enhance the EU's role on the Korean peninsula may be EU's participation in the Six-Party Dialogue as a neutral mediator with no military interests in the region. The existing six parties may need EU as a game broker making a breakthrough from the current impasse.

## **5. CONCLUSION**

North Korea has undergone economic restructuring over the last two decades. Although the country has hesitated to reform until more recently, trade statistics show that its foreign trade, including Sino-DPRK trade, is based in market mechanisms. North Korea's economic restructuring seems to be very slow compared to that of other former socialist countries. Although the trade volume has recovered recently to the level prior to economic collapse, it has recovered only through the export of natural resources to China.

The North Korean government's willingness to reform as well as external economic and financial conditions are prerequisites to rapid and successful restructuring. Considering its economic and political conditions, the EU is best qualified to be the potential donor of such technical assistance. According to the RCA indices of North Korea's exports to the EU, the EU already influences North Korea's industrial restructuring, despite its relatively small impact.

The biggest hurdle to North Korea's transition is North Korea itself. The North Korean government has been reluctant to reform its economic structure, thereby hindering changes by repressing market mechanisms, but ultimately failing. Now the new leader of North Korea must first and foremost take on the task of tackling the age-old problem of economic rehabilitation. At this moment the EU should revise the CSP and NIP from 2002 as well as cooperation policies, shaping them for North Korea's participation in an international dialogue for peace. It could prove to be a strong incentive for the North in making decisions for cooperation and reform.

## **Endnotes**

---

\* This paper was presented at the "Workshop on EU-Korea in a Changing World" on July 2 at Catholic University Leuven organized by Leuven Centre for Global Governance Studies. My special thanks are due to Dr Axel Marx, Dr Fraser Cameron, and all the participants of the workshop for the helpful comments and discussions. The remaining errors are all mine.

<sup>1</sup> Among others see Dritsakis( 2004), Awokuse(2006).

<sup>2</sup> All of former socialist countries have demonstrated GDP development corresponding to the J-curve behavior with a varying depth of the downturn. The J-curve is drawn by free-fall of production directly after the beginning of reform measures and by economic growth with the progress of transition to market economy. U-curve shows just a momentarily snapshot when the GDP level recovers the production volume before the transition. Refer Kitov(2009) on details regarding J-curve of production.

<sup>3</sup> "As the economy of the North Korea becomes increasingly isolated, it depends more and more on China for survival and development. China is North Korea's closest ally; largest provider of food, fuel, and industrial machinery; and arguably the country most able to wield influence in Pyongyang. For the DPRK, China is the partner of first and last resort. It is the first to provide outside validation of plans and often is both first and last at bat in attempts to mitigate the adverse consequences of North Korean provocations." (Nanto, 2011, p.75)

<sup>4</sup> Trade with South Korea follows the trade volume with China as second largest trading partner even though it is not recorded as foreign trade officially due to the special relation between the two countries.

<sup>5</sup> Economic sanctions according to UN Security Council Resolution 1718 (2006) and 1874(2009) imposed by Japan and the United States have reduced their respective trade with the DPRK to almost nothing with the exception of intermittent humanitarian aid after the missile and nuclear test in 2006.

<sup>6</sup> Among others, see Murrell(1990), Hare(2000), and Ferto and Hubbard(2002).



---

<sup>7</sup> Murrell(1990), p.91.

<sup>8</sup> More detailed description and economic definitions can be found in Murrell (1990) p. 92. Murrell provides many more ways to build up aggregate goods.

<sup>9</sup> See Nanto and Manyin (2010), *China-North Korea Relations*. CRS Report for Congress. December 28, 2010.

<sup>10</sup> The represented companies are quoted in the above report by Nanto and Manyin (2010), p.17-18.

<sup>11</sup> Nanto(2011), P. 80.

<sup>12</sup> The Security Council Committee established pursuant to resolution 1718 (2006) was established on 14 October 2006 to oversee the relevant sanctions measures and to undertake the tasks set out in paragraph 12 of that same resolution. Additional functions were entrusted by the Council to the Committee in resolution 1874 (2009) due to the North Korea's nuclear test and missile launch. For details on the sanctions, visit the website of UNSC <http://www.un.org/sc/committees/1718/>.

<sup>13</sup> Currently European-North Korean business cooperation include the PyongSu pharmaceutical joint venture, a polish North Korean shipping joint venture and a partnership in IT services between the Korea Computer Center(KCC) and a German partner company. The British American Tobacco(BAT) and a UK's brewery company expanded North Korea's consumer choices. Berkofsky (2010), p. 26.

<sup>14</sup> North Korea maintains its diplomatic relationships with most of the former socialist countries in Eastern Europe. On the DPRK diplomatic relations see <http://www.ncnk.org/resources/briefing-papers/all-briefing-papers/dprk-diplomatic-relations>.

<sup>15</sup> European Commission, North Korea Country Strategy Paper, <http://ec.europa.eu/externalrelations/northkorea/csp/index.htm>.

<sup>16</sup> See Berkofsky (2003), *EU's Policy Towards the DPRK-Engagement or Standstill?* Briefing Paper, European Institute for Asian Studies (EIAS), Brussels, 2003.

<sup>17</sup> See the conclusion of European Council on 23 and 24 March 2001.

## References

- Awokuse, Titus O. (2006), "Export-led Growth and the Japanese Economy: Evidence from VAR and Directed Acyclic Graphs," *Applied Economics* Vol.38. pp.593-602.
- Balassa, Bela (1965). "Trade Liberalization and 'Revealed Comparative Advantage'", The Manchester School of Economic and Social Studies Vol. 33. pp. 99-123.
- Berkofsky, Axel (2010), The EU's Relations with China, Japan and North Korea. Implications for the EU's Role and Engagement in Asian Security. ISPI Working Paper No.36. University of Pavia, Italy.
- Berkofsky, Axel (2003), *EU's Policy Towards the DPRK-Engagement or Standstill?* Briefing Paper, European Institute for Asian Studies (EIAS), Brussels, 2003.
- Drabek, Zdenek and Alasdair Smith (1995), Trade Performance and Trade Policy in Central and Eastern Europe. Discussion Paper No. 1182. Center for Economic Policy Research.
- Dritsakis, Nikolaos (2004). "Exports, Investments and Economic Development of Pre-accession Countries of the European Union: an Empirical Investigation of Bulgaria and Romania," *Applied Economics*, Taylor and Francis Journals, vol. 36(16), pp. 1831-1838.
- Ferto, Imre and Lionel J. Hubbard (2002), Revealed Comparative Advantage and Competitiveness in Hungarian Agri-Food Sectors. Discussion Papers MT-DP. 2002/8. Institute of Economics Hungarian Academy of Sciences, Budapest
- Guerrieri, Paolo (1998), "Trade patterns, Foreign Direct Investment, and industrial restructuring of Central and Eastern Europe". In: Zysman, J., Schwartz, A. eds., *Enlarging Europe: The industrial foundations of a new political reality*. University of California at Berkeley, Berkeley, pp. 130-156.
- Hare, Paul G. (2000), "Trade Policy during the Transition. Lessons from the 1990s," CERT Discussion Papers 6, Centre for Economic Reform and Transformation, Heriot Watt University.
- Hufbauer, Gary C. and John G. Chilas (1974): "Specialization by Industrial Countries: Extent and Consequences" in H. Giersch (ed.): *The International Division of Labour: Problems and Perspectives. International Symposium*. Tübingen, Germany: J.C.B. Mohr, 3-38.
- Kitov, Ivan (2009), From socialism to capitalism: 1989-2007. IDG RAS. Munich Personal RePEc Archive. 28. April 2009 Online at <http://mpra.ub.uni-muenchen.de/14914/> MPRA Paper No. 14914, posted 29. April 2009 / 10:16
- Lim, Kang-Taek (1997), "Analysis of North Korea's Foreign Trade by Revealed Comparative Advantages," *Journal of Economic Development* Vol.22, No.2. pp. 97-117.

Movshuk, Oleksandr (2001), *International Trade, Technology and Changing Comparative Advantage: A Comparative Study of Transition Economies* (1988-1998). The International Centre for the Study of East Asian Development(ICSEAD). Working Paper Series Vol. 2001-07. April 2001, Kitakyushu.

Murrell Peter (1990), *The Nature of Socialist Economies: Lessons from Eastern European Trade*. Princeton, NJ. Princeton University Press.

Nanto, Dick and Mark Manyin (2010), *China-North Korea Relations*. CRS Report for Congress. December 28, 2010.

Nanto, Dick (2011), "Increasing Dependency: North Korea's Economic Relations with China", US-Korea Economic Institute. *Korea's Economy* Vol. 27. P. 75-83.



**ENLARGEMENT OF ASEM:  
FOCUSED ON THE RUSSIAN ACCESSION AND ITS IMPLICATION TO KOREA**

SUNHEE PARK

**1. INTRODUCTION**

Once every two years since 1996, the Asia-Europe Meeting (ASEM) has been providing a region-to-region forum for multifaceted dialogue between Asia and Europe. Accepting new members in each Meeting from 2004, it has been widening its scope of enlargement (see <Table 1>, and currently ASEM is composed of 49 members, the European Commission, and ASEAN Secretariat. The enlarged ASEM, having 20 Asian countries and 29 European countries as its members, takes 59.2% of the total world population, 58.5% of the GDP, and 65.5% of the world trade, constructing the channel for the close cooperation between Asia and Europe regarding major issues in the international community. As the Prime Minister of Singapore, Goh Chok Tong argues, the primary purpose of ASEM is to determine whether the missing links between Asia and Europe, weaker than those between Asia and North America or North America and Europe, could be bridged or not. On the other hand, not only focusing on this purpose, many other pundits also presented the following importance of the ASEM. Scholars have consequently argued that ASEM is primarily about the rise of the unprecedented inter-regional links that have been materialized through the “region-to-region” approach which has been the process of ASEM (see chapter 3).

Based on the realist assumptions, inter-regionalism has been assumed by International Relations (IR) scholars to have arisen from the need to counterbalance the most notable superior power of the US, (in the case of ASEM) and also the economic power of the EU (in the case of APEC<sup>1</sup>) and East Asia (in the case of TAFTA<sup>2</sup>). From the institutionalist perspective, inter-regionalism is a way to cope with the opportunities and the risks that are inherent in the accelerating interdependence from globalization. Lastly, from the constructivist logic, inter-regionalism is a way to encourage and build a regional identity. Focusing on the constructivist approach to comprehend the rationale of the ASEM, many scholars assert that the following achievements are regarded as the most crucial roles of ASEM. ASEM grew out of the explicitly inter-regional format (EU-ASEAN), developing a region-to-region dialogue which helped to influence and shape the Asian regional identity. The inter-regional forum ASEM has apparently contributed intra-regional awareness and influenced identity development in Asia. The peculiarity of ASEM is that it comprises the nucleus of Asian regionalization which is “ASEAN+3”. There had been no formal gatherings of “ASEAN+3” countries on a regular basis before the creation of ASEM. It was during the process of ASEM, which is a region-to-region dialogue, that the “ASEAN+3” formed a *de facto* regional structure and began functioning as a region. This is the reason why ASEM has been highlighted for its inter-regional format from its inaugural meeting. Even though the Asian participants of ASEM do not constitute a formal group, their presence at a meeting with the EU, the most integrated region, plays a determinant role. Without this encounter with the EU, the Asian participants could not have existed as a ‘regional’ entity. Before the 2010

enlargement, ASEM has been generally analyzed as a bi-regional inter-regionalism (EU versus “ASEAN+3” and since the 2<sup>nd</sup> enlargement EU versus “ASEAN+3+3” which differs from the trans-regional model of that of APEC (see further below <Table 2> in section 3).

<Table 1> Enlargement of ASEM

	Founding Members	New Members from the 1st Enlarge-ment (2004).	New Members from the 2 <sup>nd</sup> Enlargement (2008)	New Members from the 3 <sup>rd</sup> Enlargement (2010)	New Members from the 4th Enlargement (2012)
Asian Side (Numbers of Asian participants)	ASEAN +3 (Korea, Japan, China) (10)	Cambodia, Laos, Myanmar (13)	ASEAN secretariat, India, Mongolia, Pakistan (17)	Australia, New Zealand, Russia <sup>3</sup> (20)	Bangladesh (21)
European Side (Numbers of European participants)	European Union European Commission (16)	10 new EU countries (26)	Bulgaria, Romania (28)	None (28)	Norway, Switzerland (30)
Driving factor		Regionally induced with ASEAN & EU enlarge-ment	Regionally induced with EU enlargement	?	

However, the 2010 enlargement, including countries such as Australia, Russia and New Zealand, brings us to reconsider the bi-regional ASEM approach and its working process. The enlargement to such a diverse group, indefinite to be classified as neither Asia nor Europe, is expected to bring challenges to the region-based coordination process of ASEM. This is because the 2010 enlargement creates a Temporary Third Category which is too vague to be classified into either Asia or Europe, and the purpose of this is solely to include these three countries. Above all, Russia's accession stands out, especially considering the fact that the Temporary Third Category is to incorporate Russia (which has an indefinite identity between Asia and Europe) and less so for Australia and New Zealand. Then, would this enlargement that is affecting the region-to-region approach, the *modus operandi* of ASEM, also bring the changes to the characteristics of ASEM? Followed by the one in 2008, the ASEM continuously progressed its enlargement two more times. This paper thus initially tends to explore if the ASEM enlargement policy which inevitably limits its bi-regional inter-regionalism, is heading more to a trans-regional inter-regionalism or not. This can be seen as an important change. Secondly, the focus is centered on the implication of the 2010 enlargement with special emphasis on the Russian accession to ASEM and Korea's position in this issue. This paper is structured in the following way: first it will highlight the fact that ASEM inter-regionalism is presented as an important feature of the new regionalism. It then examines the shifting of ASEM's bi-regional inter-regionalist nature to a trans-regional inter-regionalist one. This involves evaluating the new strategies and future perspectives of ASEM since the 2010 enlargement. Thirdly, this paper will observe the implication of Russia's accession to ASEM. It is worth noting that ASEM did not mind the confusion in its working process brought by the accession of Russia. Considering the well-functioning working process, bi-regional inter-

regionalism, it did not necessarily require the change to trans-regionalism. In other words, ASEM had no intention of fundamentally changing its working process to transregionalism, but was mindful of the benefits from accepting Russia's membership. This is because Russia's accession to ASEM can be seen as a bulwark against not only the US, which was the principal role of ASEM since its early stage, but also China, a rising potential superpower which threatens the existence of ASEM. Finally, this paper will seek to observe Korea's stance on the Russian accession to ASEM including the consecutive enlargement of ASEM in 2008. In particular, it will analyze the outcomes of Russia's accession, such as stabilized energy supply by the Russia-North Korea-South Korea natural gas pipeline and the easing of tension on the Korean Peninsula together with the changing perspective of ASEM through its enlargements.

## 2. RESURGENCE OF REGIONALISM AND INTER-REGIONALISM

Major trends of the post-Cold War which Björn Hettne defines as "global regionalization" (Hettne, 2004) explain the phenomenon of regionalism's resurgence, such as ASEM. As the term "global regionalization" suggests, the two words –globalization and regionalization– appear as key words to understand the new structure of world order. This new structure of world order incorporates "global regionalization". Regionalism is thus a strategy to adapt to globalization. The region tends to react under the pressure of globalization resulting in the emergence of "Region-State". In addition to the emergence of regionalism, regionalism's capacity to expand and along with it its inter-regional links, is one of the most important features of the new regionalism. The twin processes of regionalization and globalization can be strengthened by the inter-regional arrangement. Inter-regionalism is a structural product of both globalization and regionalization in the sense that more regionalization becomes a key factor in the new world where globalization spreads and inter-regionalism plays a role in and causes the regions to interact with each other in order to co-manage their increasingly complex interdependence. Inter-regional approach has been used by the EU to forge external relations which is in line with its "*regionalist ideology*" (Hette & Söderbaum, 1999, p. 9). The EU's purpose for establishing ties with foreign countries was to establish group-to-group relations, as in the case with ASEAN. In the context of the new regionalism in which the region emerged in various forms, the inter-regional link manifests in diverse forms. "*While interregional relations had been limited to the EU's group-to-group dialogues with other regional organizations in the past, inter-regionalism in the context of new regionalism took different forms of informal and multi-layered arrangements with a more diffuse membership.*" (Hänggi, 2003, p. 201).

Faced with this new global structure, the Asia-Europe Summit Meeting, proposed by Singapore and France as a new framework for inter-regional cooperation, encompasses the existing ASEAN-EU relations along with the three countries of Northeast Asia - Japan, China, South Korea. With the expansion of the ASEAN-EU relations to these three major Asian countries, ASEM was expected to generate wider impacts than those appeared in the ASEAN-EU relationship. The establishment of the inter-regional ASEM link is therefore a product which in itself embodies globalization and regionalization, factors that can cause a structural change in world order.

### 3. ASEM AS BI-REGIONAL INTER-REGIONALISM

The various forms of inter-regional cooperation have emerged as a result of the new regionalism. Inter-regional cooperation multiplies itself without scholars being able to define the characteristics of the different types of inter-regionalism, except for trans-regional relations and inter-regional relations. *"While the group-to-group dialogue without common institutions were defined as inter-regional relations, trans-regional forum was seen as having a more diverse membership base."* (Rüland, 2002, p. 2). It seems that in the following studies of regionalism, the authors all agree at least on the fact that a relationship between groups of countries in the absence of any common institution is an inter-regional relationship, while trans-regional relationship implies cooperation between more diverse members.

Jürgen Rüland distinguishes the bilateral type of inter-regional relationship from the trans-regional relationship (Rüland, 2002). ASEAN-EU, MERCOSUR-EU, ANDEAN Community-EU, relations which are defined by a dialogue between groups, with a regional entity already established, are all examples of bilateral inter-regionalism. Such relationships depend more on the existing institutions and do not require the creation of common institutions to manage the inter-regional link in focus. Unlike bilateral inter-regionalism, trans-regionalism can lead to infra-structural institutions of its own, such as the secretariat. In this context, Rüland, who restricts the inter-regional relationship to a dialogue between pre-existing groups, considers both ASEM and APEC as a trans-regional relation. Rüland thus considers ASEM and APEC as trans-regional relationships between various members, but he does not do so without hesitation. In the same article, he questions the different ways trans-regionalism can be defined. Can the same form of cooperation in APEC be equally seen in ASEM, which has, unlike APEC, no secretariat and which looks more like a relationship between groups with the emergence of the "ASEAN +3"?

This concern is shared by Gilson, who classified ASEM in the same manner as Rüland did, as trans-regionalism but of a "hybrid" form (Gilson, 2002). Although Gilson classifies ASEM as trans-regionalism, the adjective "hybrid" shows her hesitation. It seems that Gilson, while being fully aware of the development of the new form of counterpart consistency, feels obliged to take into account the diversity of the members of ASEM, thus the classification as trans-regionalism by default. It is therefore not surprising that Gilson, in her 2005 article (Gilson, 2005), looks for inter-regionalism, abandons trans-regionalism, and pays attention to the development of the relationship between regions within ASEM.

The analysis of Hettne (Hettne, 2003, p. 40) is not much different from that of Rüland and Gilson, since it considers that the difference between trans-regionalism and inter-regionalism is that while trans-regionalism covers countries from more than two regions, inter-regionalism refers specifically to more organized and systematic interactions. In this way, Hettne considers that the difference between ASEM and APEC is that ASEM has the potential to function as a cooperation between regions, - EU and "ASEAN +3" - while APEC, consisting of various countries of more than two regions is therefore unable to serve such a function. The Asian participants of ASEM - "ASEAN +3" - are not yet fully formed as a region, but they are advancing in the process at the heart of ASEM. *"It is interesting to compare the APEC to Asia-Europe Meeting (ASEM), the first being an agreement*



between states while the latter is a sort of discussion club between the two formal organizations: EU and ASEAN +3. " (Hettne, 2003, p. 40)

<Table 2> APEC versus ASEM

	APEC (1989)	ASEM (Before the 2010 Russian accession)
Composition	US, Canada, Mexico, ASEAN <sup>4</sup> Australia, New Zealand, Hongkong, Taiwan, Chile, Peru, Russia, Papua New Guinea, China, Japan, Korea	"ASEAN +3"(Korea, China, Japan) + +3"(India, Pakistan, Mongolia) including ASEAN secretariat <b>versus</b> European Union(including European Commission)
Form	Trans-regional type of inter-regionalism	Bi-regional type of inter-regionalism
Existence of secretariat	Yes	No
Possible impact of intra-regionalism	No	Rise of <i>de facto</i> "ASEAN+3" and Asian regionalization process with "ASEAN+3+3"

APEC includes twenty-one member economies including two non-states, Hong Kong and Taiwan, as well as several states geographically outside East Asia including the US, Canada, Mexico, and Russia. APEC includes members from dispersed regions such as North America, East Asia, Latin America and Oceania. Unlike ASEM which is based on the existing ASEAN-EU relationship operating in two formal organizations, APEC functions as an arrangement between states. Regional organizations like ASEAN cannot find its role within APEC. For this reason, APEC has not yet included the new members of ASEAN which is Cambodia, Laos and Myanmar. While recognizing that APEC could only discuss enlargement after 2007 because of its official position (which requires a ten-year moratorium (1997-2006) regarding the acceptance of a new member), it is clear that the functioning of APEC differs from that of the ASEM which takes a region-to-region approach. ASEM has the potential not only to improve relations between Asia and Europe, but also to develop two distinct regions that can produce more systematic and organized contact than in the trans-regional cooperation. In this case, one region can encourage or promote regionalization for another region that is not yet integrated. In other words, this particular concept lies behind the idea that a group of countries within the inter-regional relation (*i.e.* the EU) can serve as an external factor that stimulates the regionalization of another group - "ASEAN +3" - in interregional cooperation. In the case of ASEM, this pattern can be found where the EU encourages the process of "ASEAN +3" and further encourages the Asian regionalization process.

Finally, it is with the classification made by Heiner Hänggi that further analysis of the type of inter-regionalism of ASEM could be conducted (Hänggi, 2000, p. 5). Hänggi classifies the inter-regional form into three types: the arrangements between regional groupings (first type), the bi-regional/trans-regional arrangements (second type) and a hybrid form that refers to relations between regional clusters and a unique power (third type). The second type of inter-relationship distinguishing the bi-regional from trans-regional basis, provides a classification more relevant for research. Under this classification, Hänggi considers APEC as a trans-regional

relationship which brings together diverse countries from more than two regions while he classifies ASEM as a bi-regional inter-regionalism which includes the countries of two distinct regions: ASEAN + 3 and the EU.

As all the studies of regionalism that have been mentioned attest to the potential of achieving intra-regionalization ("ASEAN +3") through inter-regional cooperation (ASEM), this is the key to understanding the differences between trans-regionalism and bi-regional inter-regionalism. Therefore, continuing from the analyses of Rüland, Hettne, Hänggi and finally of Gilson - who has shown the difficulty of distinguishing between the trans-regionalism and inter-regionalism - this paper nevertheless identifies three types of interregional forms: group-to-group (bilateral), region-to-region (bi-regional), and trans-regional. The addition of the bi-regional type of inter-regionalism allows us to analyze more precisely the different forms of interregional cooperation and the type of inter-regionalism ASEM in particular.

The group-to-group dialogue (inter-group) — i.e. bi-lateral inter-regionalism — traditionally favored by the EU, is considered a model of inter-regional arrangements that is closely linked to the old regionalism. The emergence of the second (bi-regional) and third (trans-regional) types reflect a more recent phenomenon which makes them more difficult to be defined. In both types of groups, members are more heterogeneous than in the traditional dialogue groups including Member States from more than two regions. But what is important about the distinction between bi-regional and trans-regional is the fact that in the bi-regional cooperation, heterogeneities tend to homogenize to achieve internal regionalization, while in trans-regional cooperation one cannot expect such an impact. The bi-regional cooperation is thus inter-regionalism more suitable to produce intra-regional dynamism.

<Table 3> Inter-regionalism including group-to-group (bilateral), bi-regional and trans-regional arrangements

Form of Inter-regionalism	Inter-regional	Trans-regional
Bilateral (group to group)	ASEAN-EU, MERCOSUR-EU, ANDEAN-EU	
Bi-regional	ASEM	
Trans-regional		APEC

Bi-regional ASEM thus not only promotes the proximity between regions, but also influences intra-regional development. The idea of ASEM as a regional integration factor acting in favor of building a community identity in East Asia has been developed. Heiner Hänggi asserts that a regional external actor can play the role of an "extra-regional echo" (Hänggi, 2003, p. 198).<sup>5</sup> His interview with an official of the Ministry of Foreign Affairs of Singapore makes Asian regionalization - "intra-regionalism" - through ASEM - "inter-regionalism" - more plausible. «East Asian countries used ASEM not only for bridging the 'missing link' in the global triangle but also for bridging the 'missing link within Asia' between the ASEAN and the North Asian countries (Hänggi, 2003, p. 212).

ASEM's inter-regionalism has blurred the distinction between Southeast Asia and Northeast Asia in an Asian space by encouraging the EU to integrate the ASEAN, which is the core process of "ASEAN+3" towards East Asian Community. Requirements of engagement in region-to-region dialogues are a 'classic approach' adopted by the EU as seen in its agreements with ASEAN and with the other regional system. This inter-regional

and bi-regional coordination can be observed in the functioning of ASEM. ASEM coordinators, whose role is to facilitate coordination within the framework of this structure, are assisted by a smaller group of coordinators in Europe and Asia, four of them in total (two for each region), who meet periodically. The coordinators meet two or three times a year and discuss respectively: general, political and economic issues. The coordination between Asian and European participants requires internal coordination in advance. Although the European coordinators are chosen by the Presidency country and the European Commission, the Asian coordinators are based on *ad hoc* cooperation between a representative of the Southeast Asian countries (holding the ASEAN presidency) and a representative of Northeast Asia. Unlike the EU, that conveys a well-organized institutional framework, the Asian participants comparably have a harder time to coordinate. However, ASEM has become a unique place for drafting the Asian regionalization. ASEM coordinators play a crucial part and they remain part of an essential *modus operandi* of ASEM, which states that regional coordination is needed before the Senior Officials Meeting (SOM) of ASEM.<sup>6</sup>

#### 4. 2010 ENLARGEMENT: SHIFT FROM A BI-REGIONAL TO A TRANS-REGIONAL INTER-REGIONALISM?

However, the enlargement of 2010 with the joining of new member states such as Australia, Russia and New Zealand brings us to the question regarding the bi-regional ASEM approach. Could ASEM maintain its region-based coordination mechanism of bi-regional inter-regionalism with its heterogeneous members such as Russia which is unclassifiable either to Asia or to Europe? Or, is it shifting towards a state-to-state dialogue process with a more diffuse membership without the regional coordination provided by the EU and ASEAN? This 2010 enlargement is fundamentally different from the 2004 and 2008 enlargements which can be demonstrated as the region-to-region approach of ASEM process. The first enlargement which occurred in 2004 was regionally induced with the respective enlargement from ASEAN (Laos 1997, Myanmar 1997 and Cambodia 1999) and the EU (10 Central and Eastern European Countries). The second enlargement of ASEM occurred in 2008 and can also be fairly seen as a region-to-region approach of ASEM by including the ASEAN Secretariat and three additional Asian countries ( Mongolia, India and Pakistan) in the face of the EU's enlargement to 27 member states. It is worth noting that the enlargement of India, Pakistan and Mongolia can be seen as ASEM's change of strategy to include not only the enlarged member states of the regional grouping of ASEAN and the EU, but also the individual states separately. However, the second enlargement was not arguable in the process since the Asian identity of those countries was not disputed, and the "ASEAN+3+3" combination later led to the creation of new subgroup: "Northeast and South Asia (NESA)". Nevertheless, the 2010 enlargement is in fact more problematic since the "Temporary Third Category Arrangement" was created in order to accommodate the application of Russia and also those of the other two applicants.

According to the ASEM's principle of enlargement called the "two-key approach" set in Asia Europe Cooperation Framework (AECF) 2000<sup>7</sup>, the admission of the new members should be initially accepted by members of their own region (Asian side or European side) and then accepted "on a consensual basis" between the leaders of both regions. The priority of the decision regarding enlargement lies with the members of the

corresponding region. For example, the decision to incorporate India, Mongolia, Pakistan and the ASEAN secretariat into ASEM in the 2008 enlargement was initially decided by "ASEAN+3", which was then an incumbent member from the Asian side. We must recognize that this principle of "two-key approach" to enlargement reflects the spirit of the region-to-region process. The 2008 enlargement of ASEM adequately demonstrated the region-to-region approach of ASEM by including the ASEAN Secretariat and the three additional Asian countries Mongolia, India and Pakistan. Thus, the birth of the new combination "ASEAN+3+3" (later on NESAs) was feasible.

However, the 2010 enlargement of ASEM which created the "Temporary Third Category Arrangement", transgressed the region-to-region based approach of the ASEM enlargement process. Nevertheless, Australia and New Zealand as contested Asian member states can be yet understood because of their strong economic linkages with Asia. Their strong participation in various Asia-Pacific regional architectures (APEC and East Asia Summit) would also make it natural for them to participate in the ASEM process on the Asian side. However, Russian application was a little more complicated (Yeo, 2010, p. 109). This is due to Russia's ambiguous position of not being able to be classified under either Europe or Asia, although Russia was a member of the APEC. The decision to incorporate Australia and New Zealand was initially discussed with the Asian members, but with the formal application request from Russia, a temporary third group ("Temporary Third Category Arrangement") was created to accommodate both Australia/New Zealand and Russia. This implies the inevitable change in the working process of ASEM. How can Asian interest streamlining be managed before the ASEM Summitry? The urgent priority after ASEM's enlargement would be to determine the status of members of the temporary third category in relation with the regional grouping. Then, should this third group of Russia, Australia and New Zealand be categorized as Asian side or European side? This regional grouping of Asia or Europe will be obviously more problematic for Russia. Considering the fact that the EU is even more resolute on its regional characteristics, it seems almost impossible for Russia to be grouped in the European side. If this is the case, does it indicate that ASEM's original bi-regional process is shifting towards a state-to-state dialogue process with the accession of Russia?

Immediately after the creation of forum in 1996, Russia expressed its desire to join ASEM as a representative of Europe and then later on, in 2001, applied for membership as a representative of Asia. This can be explained by Europe's firm position of only accepting the member states of the EU. Consequently, the "Temporary Third Category Arrangement" was probably created to accommodate Russia's application. Moreover, it is Russia's accession that raises different questions: will ASEM abandon its region-to-region approach to a state-to-state dialogue process with a more diffuse membership without regional coordination provided by the EU and ASEAN? Can this be translated as ASEM's shift from a bi-regional forum to a trans-regional forum? If so, what is the rationale of this shift to a bi-regional inter-regionalism to a trans-regionalism?

According to the ASEM Foreign Ministers Meeting held in June 2011, the official stance of ASEM was that it would stick to its function on bi-regional inter-regionalism despite the member states' heterogeneity. *"It must be assured that with the enlargement of ASEM the effectiveness and efficiency of the forum is increased and the bipolar (Europe-Asia) model of inter-regional cooperation is retained as it is set in AECF 2000."*<sup>8</sup> As

mentioned above, even though ASEM highly values the central role of the EU and ASEAN and even though it seems hard to turn away from the region-to-region based approach, the accession of Russia holding heterogeneous identity will bring inevitable changes to ASEM's working process. Then, what are the fundamental reasons that encouraged ASEM to accept the new enlargement process with extravagance, which does not follow the originally established enlargement process and accept Russia as its member? Why did ASEM include countries with ambiguous identities such as Russia?

## **5. IMPLICATION OF RUSSIAN ACCESSION**

With the accession of Russia in ASEM, it is expected that ASEM's geopolitical influence would be expanded from the two ends of Eurasia and make Central Asian states more interested in ASEM. The accession of Russia which is the representative country in Eurasia, can be interpreted as a means to counterbalance the US, one of the main rationales of ASEM since its very beginning, and also China, which is progressively gaining power in the international community and thus becoming a threat to the presence of ASEM.

Regarding Russia's membership in ASEM, this section proposes one of the crucial rationales of ASEM, which is to strengthen a bulwark against the US. According to Brzezinski's argument (Brzezinski, 1997, Chap. 2), control of Eurasia is the key to global domination and control of Central Asia is the control of Eurasia. This approach originates from MacKinder's theory (MacKinder, 1904, p. 435) of 'Pivot Area' which coincides strongly with much of the post-Soviet space, referring to a particular area on the Eurasian landmass that he deemed of critical geostrategic importance. Acknowledged as the father of geostrategy, MacKinder's theory along with the previous approach of geostrategy emphasizes the importance of presence of hegemony in Central Asia. It furthermore deals with the 'Pivot Area' under the influence of the US, especially when the two ends of Eurasia — the EU as the Western end and countries around Japan as the Eastern end — are all within the sphere of influence of the US. Moreover, in comparison with the US's excessively strong position on these two ends (Asia and Europe), relations between Asia and Europe were too weak. In this respect, since ASEM's earliest phase of establishment, its objective of reducing the overdependence of both Europe and Asia on the US was extensively researched by numerous scholars (Camroux & Lechervy, 1996; Bobrow, 1999; Soeya & Roper, 1997). In other words, Russia's entry to ASEM reminded of the fact that one of the implicit yet important objectives of ASEM is to counterbalance the activities of the US; in particular, it suggests ASEM's objective to counterweight the power of the US in Central Asia. With the enlargement of ASEM to Russia, ASEM is expected to play a crucial role not only in economic matters, but also in non-economic and especially security matters in order to provide a counterweight to the US. It is worth noting that the US is gradually exerting its influence in Central Asia and the presence of the US forces in Uzbekistan and Kyrgyzstan, under the pretext of wars with Afghanistan and Iraq, is one of the epitomes.<sup>9</sup> For Russia, the post Soviet space which includes the Commonwealth of Independent States was under its own sphere of influence for a long time. However, after having witnessed the US influence in Central Asia, Russia probably felt the necessity of joining ASEM to counterbalance the rising influence of the US. In particular, the willingness of Georgia and Azerbaijan to acquire NATO's membership and the building of the

Baku-Tblisi-Ceyhan(BTC) pipeline to transport oil from the Caspian Sea with support from the US (which does not necessarily pass through the Russian regions but through countries that are more pro-American such as Azerbaijan, Georgia, and Turkey) clearly show that the US power is radically increasing in Central Asia. Therefore, it seems rather reasonable for Russia to join ASEM to counterbalance this threat.

Russia's entry to ASEM is also expected to create counterweight against unrivaled Chinese power. The recent ASEM summit has been analyzed as overshadowed by the Chinese bilateral meetings. During the ASEM summits instead of the interaction in the form of group-to-group which is the EU and Asian group, the bilateral state-to-state meetings in the margins of the ASEM summits turn out to be the focus. This indicates the rise of China's sphere of influence in ASEM due to bilateral meetings with China. While many issues are supposed to be discussed within the ASEM framework, individual EU member states seemed to be more willing to talk with China bilaterally (Lai, 2010).

Russia's accession is also closely related to the energy cooperation that was initially discussed in the ASEM framework from 2008 onwards. In April 2008, the first ASEM forum on Energy Security Policy was held by Vietnam, followed by the First ASEM Ministerial Conference on Energy Security meeting held in Brussels in 2009. The EU particularly exposed the risks of long distanced pipelines, with the gas supply crisis at the beginning of 2009 caused by a Russia-Ukraine row as an example. The importance of energy governance including the energy security stood out in the first general-level meeting. Since both Europe and Asia shared commonality of being dependent on imported Russian resources, the energy security issues became the important issues of inter-regional dialogue and cooperation of ASEM. Russia supports the supply in China with pipelined oil through the East Siberia Pacific Ocean project while also supplying Japan by 2015 (Dent, 2011, p. 138), thus Russia is the important major energy exporter that supplies both Europe and Asia. Although there may be competitive tensions due to the fact that all of ASEM Partners have to secure the same Russian energy resources, this becomes one material reason why the substantial ASEM energy cooperation can be the urgent cooperation field of ASEM.

## **6. IMPLICATION OF RUSSIAN ACCESSION TO KOREA**

Even though Russia had been notifying its intention of joining the ASEM summit since 1996, Korea was not favorable to Russia's accession from the beginning. This is because Korea promoted Korea-EU bilateral relations through the multilateral framework of ASEM process and put higher valuation on the process of "ASEAN+3". Thus in regards of the establishment of regional integration of East Asia, Korea had no merits from supporting the accession of such disparate countries like Russia. Korea was more active in strengthening the process of "ASEAN+3" than any other country. In fact, when the East Asia Summit (EAS) was first held in 2005, Korea was not favorable to the accession of a heterogeneous country, Russia. President Kim Dae-Jung effectually contributed to vitalizing "ASEAN +3" by playing a leading role such as proposing the East Asia Vision Group (EAVG) and East Asia Study Group (EASG).

The momentum that converted Korea's stance to supporting Russia's accession to ASEM in 2010 was largely due to the thought that Russia's accession derived benefits to Korea even if the bi-regional approach was diverted to trans-regionalism including Eurasia. Russian accession to ASEM could vitalize projects directly related to Korea. As one of the examples, the construction of a pipeline that sends natural gas from Russia to South Korea via North Korea, in terms of diversification of energy sources, conveys a very important strategic meaning from the perspective of Korea which has scarce natural resources and thus heavily depends on imports<sup>10</sup>. President Lee Myung-bak and Medvedev of Russia planned out concrete projects by reaching the agreement of the construction of pipelines in September 2009, and set the seal on the detailed roadmap of PNG project on November 2<sup>nd</sup>, 2011. This was bolstered by Russia's permission to pass the Russian pipelines through North Korea when Kim Jong-il visited Russia in August 2011. Although the construction of Russia-South Korea pipelines was already mentioned in the *Nordpolitik* of President Roh Tae-woo in the early 1990s and this project was continuously mentioned throughout the Kim Dae-Jung and Roh Moo-Hyun Administrations in 2000s, the actualization of affirmative action such as determination of the roadmap was only now achieved. From Russia's point of view, the main interests were diverted to the Eastern Siberian Region, due to the change of the existing Eurocentric strategies of natural gas exports to the diversification strategies of export markets. This was mainly because of Europe's efforts of decreasing its dependency on Russian gas supplies and the development of shale gas in North America. For Russia who had been developing large gas fields such as 'Sakhalin-3' in order to promote economic developments in Eastern Siberia and diversification of export markets which were leaning too much on Europe, Korea was the market not to be lost. Since Korea was connected to both Russia and the continent, it had many advantageous geographical terms to promote the PNG project, the great asset to GAZPROM.

From Korea's standpoint, the construction of Russia-North Korea-South Korea gas pipelines was viewed as an economic boon because it could secure the stabilized gas supply chains for the next 30 years, diversify the origins of gas imports, and decrease transport costs. In addition, not only the cooperation between Russia and Korea gets strengthened, but also various other economic cooperation and consolidation of institutional framework of cooperation among Russia, North Korea, and South Korea can be achieved. Furthermore, political benefits such as appeasement of tensions in the Korean peninsula and stability due to the improved relations between South Korea and North Korea are expected. Of course, this argument is not only derived from the bilateral relation between Korea and Russia, but also reiterated in the multilateral framework such as APEC and East Asia Summit (EAS) of which Russia acquired membership in 2011. However, one clear practicality of the framework of ASEM is that, unlike in APEC, Korea succeeded in making security issues in the Korean peninsula such an issue through ASEM. As they adopted the Declaration for Peace on the Korean Peninsula in the Third (Seoul Declaration for Peace on the Korean Peninsula) and the Fourth summit (Copenhagen Political Declaration for Peace on the Korean Peninsula) of ASEM, the ASEM summits played a crucial role in breaking diplomatic and political ground with regards to the issues of the Korean peninsula, especially the relations between South and North Korea. Although the EU is not a member of the Six-party talks, the meetings specifically aimed to find a peaceful resolution to improve relations between North and South Korea. This is especially the case regarding



the absence of the US in ASEM, who insists on nuclear disarmament before having talks, the construction of North Korea-South Korea gas pipelines bore positive effects such as alleviation of tensions and peace stability in peninsula.

## **7. CONCLUSION**

The 2010 ASEM enlargement with unclear modalities of enlargement (Temporary Third category arrangement) and unclear geographical status of the members brings us to question the shift from a bi-regional inter-regional format of ASEM to a trans-regional format. However, ASEM will probably not abandon its region-to-region based approach since both sides still have an interest in maintaining ASEM's bi-regional structure. Russia, Australia, and New Zealand which belonged to the Temporary Third category when they joined ASEM in 2010 were re-categorized into the Asian group, since they were included in the NESAs from the coordinator's group meeting which prepared for the 9<sup>th</sup> ASEM summit of November 2012. This ASEAN+NESA can reveal the fact that the ASEM still wants to maintain the talks between Europe and Asia, that is to say the region-to-region format. Through its enlargement once more, the 9<sup>th</sup> ASEM Summit in 2012 accepted Bangladesh in the Asian group and Norway and Switzerland in the European group as new members. The fourth enlargement that has accepted Norway and Switzerland in the European group can be seen as an exception since the Europeans restricted European participants to only EU members. Although the European side is now beyond the confines of the EU, it is still no more than the region-to-region format of Europe versus Asia (ASEAN + NESA). In this connection, we can grasp that the objective of the 2010 enlargement was not aimed at changing ASEM's working process. Rather, ASEM's seeming inclination to trans-regional format can be interpreted as the means forced by circumstances to include Russia and further to include other countries in Eurasia. The accession of Russia, the representative country of Eurasia, thus can be regarded most persuasively as the principal rationale of ASEM: to counterbalance the US' hegemonic stance, as one of the primary rationales of ASEM suggests, and also to counterweight against unrivaled China in ASEM which is becoming the potential threat to ASEM's existence. Thirdly, Russia's accession made the energy security, which is one of the main challenges of the 21<sup>st</sup> Century for Asia and Europe in ASEM framework, very discussable in-depth. This is especially the case for the situations where the EU is particularly exposed to the risks of long-distance pipelines. Many Asian countries are also exposed to risks related to long distance shipping through narrow and particularly exposed to security risks straits, such as the straits of Hormuz and the Malacca Straits. Discussions on the energy security can therefore be regarded as important issues of inter-regional dialogue and cooperation between Asia and Europe. Furthermore, in terms of the effects of Russia's accession on Korea, stabilized energy supply as well as the alleviation of tensions in Korean peninsula can be expected.

Concerning the recent enlargements, Korea was in favor of both enlargements, the one that included Russia, Australia, and New Zealand in 2010 and the recent enlargement in 2012.<sup>11</sup> Compared to the other Asian countries, Korea has remarkably advanced its relations with the EU due to the ASEM process which dated from 1996. Although the diplomatic relations between Korea and the EU were established in 1963, the very first Korea-



EU summit was held at the margins of ASEM 2002 in Copenhagen. In addition, the first FTA that the EU has concluded in Asia was with Korea. In the 2010 Brussels Summit, Korea took the lead role to talk over the global economic crisis and won support from the member nations for the successful hosting of the G20 Summit. Furthermore, in the ASEM Summit held in Laos Vientiane in November 2012, Korea placed the emphasis on reporting Korea's Green Growth policies such as Green Climate Fund (GCF) and Global Green Growth Institute (GGGI) and their results. On this wise, Korea is apt to take the ASEM as the diplomatic stage for enhancing the networks with major countries in Europe. With the intention of promoting its national interests through the ASEM, Korea endeavors through ASEM framework to devise means to help improve various forms of global governance by cooperating with the EU.

## Endnotes

---

<sup>1</sup> Created in 1989, Asia Pacific Economic Cooperation(APEC) has since the beginning been conceived as a forum for economic cooperation.

<sup>2</sup> Transatlantic Free Trade Area(TAFTA) has been proposed between the United States and the European Union in the 1990s.

<sup>3</sup> These three countries did not belong to the Asian group since they were classified into « Temporary Third Category » when they joined as members in 2010. However, they are shown in the table as above since they were re-classified into the NESA (NorthEast and SouthAsia) in 2012. NESA has been created from 2008 with the joining of India, Mongolia and Pakistan in ASEM. Currently NESA includes countries such as Korea, China, Japan, India, Mongolia, Pakistan, Australia, New Zealand and Russia.

<sup>4</sup> Cambodia, Laos and Myanmar excluded.

<sup>5</sup> HÄNGGI Heiner, « Regionalism through interregionalism » in LIU Fu-Kuo, REGNIER Philippe(ed.), *Regionalism in East Asia : Paradigm shifting ?*, Routledge, Curzon, 2003, p.197-219 (198).

<sup>6</sup> « Recommendations for ASEM working methods – Draft Proposals for FMM 6 » in Sixth Foreign Affairs Meeting, Kildare, April 2004.

<sup>7</sup> The AECF adopted by Heads of State and Government in ASEM 3 Summit in Seoul in 2000, sets out the vision, principles, objectives, priorities and mechanisms for the ASEM process for the first decade of the new millennium.

<sup>8</sup> The Tenth ASEM Foreign Ministers' Meeting (FMM) Chair's Statement, point 91.

<sup>9</sup> At the Astana summit in July 2005, Shanghai Cooperation Organization(SCO) urged the US to withdraw its troops from SCO. Therefore, all of the US troops withdrew in Uzbekistan and some also withdrew in Kyrgyzstan.

<sup>10</sup> Following the 2005-2006 data, South Korea is the 10<sup>th</sup> largest oil consumer, 5<sup>th</sup> net importer of oil and 2<sup>nd</sup> largest importer of LNG in the world.

<sup>11</sup> Written Interview with a senior official in charge of ASEM from the Korean Foreign ministry on the 14th of November 2012.

## References

ASEM Foreign Ministers Meeting (2001), "Chair's Statement." In Tenth Foreign Minister's Meeting, Budapest, June.

\_\_\_\_\_ (2004). "Recommendations for ASEM working methods – Draft Proposals for FMM 6." in Sixth Foreign Ministers Meeting, Kildare, April.

Bobrow, D. B.(1999). "The US and ASEM: why the hegemon didn't bark?" *The Pacific Review*, Vol. 12, No. 1, pp. 103-128.

Brzezinski, Zbigniew (1997). *The Grand Chessboard : American Primacy and its Geostrategic Imperatives*. NewYork, Basic Books.

Camroux, David (1997). "Asia and Europe : very preliminary thoughts on an international sociology of regional interactions." ECPR-JPSA Conference, University of Warwick, October.

Camroux, David and Lechervy, Christian (1996). "Close encounter of a third kind?" The Inaugural Asia Europe Meeting of March, 1996.' *The PacificReview* Vol. 9, No. 3, pp. 442-53.

Dent, Christopher M. (2011). "Asia and Europe : Meeting Future Energy Security Challenges." in Sebastian Bersick & Paul Van der Velde, *The Asia-Europe Meeting : Contributing to a New global Governance Architecture : the eighth ASEM Summit in Brussels(2010)*, ICAS Publication Series (Edited Volumes 15), Amsterdam University Press, pp. 127-142.

Gilson, Julie (2005). "New Interregionalism? the EU and East Asia." *European Integration*, Vol. 2, No. 3, pp. 307-326.

\_\_\_\_\_ (2002). "The Development of Europe's linkages with East Asia : Hybrid Trans-Regionalism ?" in Working paper 2002-2003, Institute of European Studies, University of California Berkeley, December.

Hänggi, Heiner (2003). "Regionalism through interregionalism." in LIU Fu-Kuo, REGNIER Philippe(ed.), *Regionalism in East Asia : Paradigm shifting ?*, Routledge, Curzon, pp. 197-219.

\_\_\_\_\_ (2000). "Interregionalism : empirical and theoretical perspectives." Paper prepared for the workshop *Dollars, Democracy and Trade ; External influence on Economic Integration in the Americas*, The Pacific Council of International Policy, Los Angeles, May.

Hettne, Björn (2004). " Interregionalism and World Order." Paper presented to Section 33, *States, regions and regional world orders*, SGIR, Fifth Pan-European International Relations Conference, Netherlands Congress Centre, the Hague, September 9-11.

\_\_\_\_\_ (2003). "The New Regionalism Revisited." in Söderbaum, Fredrik & SHAW, Timothy M., (eds.), *Theories of New Regionalism*, Palgrave, Macmillan.

\_\_\_\_\_ & Söderbaum, Fredrik (1999). "The new regionalism approach." *Politeia*, Journal of the Departments of Political Sciences and Public Administration, University of South Africa, vol.17, n°3.

Lai, Suet-yi (2010). "To 'Bi' or not to 'Bi'? When bilateralism is the choice of actors in ASEM." School of International Studies, Jawaharlal Nehru University, New Delhi, European Union Studies Association(EUSA), 8-9 January.

Mackinder, H. J. (1904). "The Geographical Pivot of History." *The Geographical Journal*, vol. 24, no. 4.

Maull, Hanns and Akihiko, Tanaka (1997). "The Geopolitical Dimension." in CAEC, *The Rationale and Common Agenda for Asia-Europe cooperation*, Tokyo, Council for Asia-Europe cooperation.

Rüland, Jürgen (2002). "Interregionalism in International Relations." Conference Summary, Arnold-Bergstaesser-Institute, Freiburg, Germany, 31 January and 1 February.

Soeya, Yoshihide and Roper, John (1997) "The political and economic security dimension." CAEC, Tokyo Conference, 4-5 November.

Yeo, Lay Hwee and Hofmeister, Wilhelm (eds.) (2010). "The Asia-Europe Meeting: Engagement, Enlargement and Expectations." Konrad Adenauer Stiftung & EU Center in Singapore.



## THE FUTURE OF EU-KOREA RELATIONS

### CONCLUSIONS AND RECOMMENDATIONS

Axel Marx and Jan Wouters

#### 1. INTRODUCTION

This volume examined the economic, political and policy processes underlying current EU-Korea relations, following the implementation of the ambitious EU-Korea FTA. In so doing, we aimed to scrutinize the ways emerging EU-Korean regulatory regimes frame the pathways and possibilities for a more stable, cooperative and integrated collaboration. These regulatory frameworks have become a key area of political activity in international relations, and as they emerge, they become strongly interrelated to various transnational integration processes. The importance of these regulatory frameworks is highlighted by the extensive provisions concerning regulatory collaboration which are embedded within the FTA. From the perspective of regulatory harmonization, the creation of encompassing rules for both economies could serve as a basis for further prosperity. What emerges are transnational regulatory networks (TRN). (Bruszt and McDermott, 2009; Djelic and Sahlin-Andersson, 2006; Jordana & Levi-Faur, 2012; Rodrik, 2011; Verdier, 2009) These TRNs consist of a myriad of agreements and collaborative structures and constitute structures of opportunity for achieving policy goals. They have proven to be crucial for generating learning effects, reducing uncertainty, increasing quality of decisions and performance and lowering of transaction costs. In leading publications Slaughter (2004) and Martinez-Diaz and Woods (2009) focused on regulatory networks as a key concept in order to understand current development processes in a global order. Martinez-Diaz and Woods (2009; see also Börzel, 2011; Torfing, 2012) identify five functions of networks, namely agenda-setting, consensus building, policy coordination, knowledge production and exchange, and norm-setting and diffusion.

The rise of international network governance and the formation of transnational regulatory networks regimes takes place in a context of a more general and profound shift from government to governance which is redefining the role of states in market regulation. This shift is *inter alia* characterised by increased participation of non-state actors in policy making, adaptability and constant learning and regulatory coordination. (Lobel, 2004; see also 2012; Rhodes, 2012) All these elements are present in the current development of EU-Korea relations as they were discussed in the present volume. As a result, the EU-Korea FTA and EU-Korea relations in general constitute a primary case of transnational regulatory networks. This volume analysed in-depth the many dimensions of such a transnational regulatory network. In this concluding chapter we aim to take stock of the most important arguments in the contributing papers and provide some general recommendations emerging from the papers. The chapter ends with a conclusion

## 2. EU-REPUBLIC OF KOREA COOPERATION: A REVIEW OF THE MAIN ARGUMENTS

### *EU-REPUBLIC OF KOREA COOPERATION: THE FREE TRADE AGREEMENT*

A first set of papers discussed in depth the EU-Korea Free Trade Agreement. The papers build on an existing body of literature (Brown, 2011; Cremona, 2011; Horng, 2011) which aim to analyze in depth the Eu-Korea FTA and its implications.

The paper by Chang-Sang Cho provided an extensive and in-depth discussion of the EU-Korea FTA. It is the most extensive treatment of the EU-Korea FTA and provides an excellent overview and discussion of the structure and provisions. It fleshes out the main characteristics of the most ambitious trade agreement ever negotiated by the EU as was pointed by H.E. Karel De Gucht, current European Commissioner for Trade. In the paper Chang-Sang Cho argues that the Korea-EU FTA is a mutually beneficial trade pact, as well as an important global signal of commitment of Korea and the EU to free trade and trade liberalisation. The strategic values of the FTA go far beyond the sphere of trade and investment. Coupled with the Korea-EU Framework Agreement signed in May 2010, the FTA, it is argued, will pave the way for a solid institutional framework to the new relationship between Korea and the EU, and will contribute to the establishment of a “strategic partnership” as was declared upon at the Korea-EU Summit held in Brussels in October 2010. The paper makes clear that both Korea and the EU make good use of trade policy to pioneer overseas markets and to arrange investment protection mechanisms for their companies, coming up with appropriate policy agendas to adapt changing global economic environment. The FTA is of great significance in that it embodies the spirit of the renewed trade policies of both parties. By the end of the transitional periods, virtually all import duties between the two economies will have been removed. Additionally, the FTA breaks new ground in tackling significant non-tariff barriers to trade, with a specific focus on the automotive, pharmaceuticals, medical devices and electronics sectors. The FTA also creates new opportunities for market access in services and investments, and lead to major advances in areas such as intellectual property, government procurement and competition policy. As the first FTA the EU has concluded with an Asian partner, the FTA is expected to support the EU in securing a foothold in Asia and serve as EU's springboard to the rapidly growing Asian market. In particular, once Korea successfully signs agreements with China and Japan, the EU will be able to substantially expand its overseas markets through the FTA. Lastly, the paper discussed the impact of the FTA on Korea's overall economic system. It is argued that the FTA will upgrade Korea's institutions and practices to the EU level, thereby enhancing Korean economy's transparency and predictability. As for the EU, the deal is in accord with its new trade policy direction aiming to promote internal economic growth and job creation. The paper ends with an exploration of different areas in which further collaboration can be pursued including *inter alia* green growth strategies.

The paper by Eugenia Laurenza and James Mathis focuses on the services component of the trade agreement. It compares the domestic regulation provisions in the field of international trade and services of the EU-Korea FTA with that of the US-Korea FTA (2011). The paper examines the subjects of transparency, regulatory cooperation, competition law and policy, and their institutional context, to assess the depth of integration generated and the resulting level of compatibility that results between the agreements. The paper

determines that many of the subjects are treated in a softer law manner that establishes on-going systems of cooperation in order to realize the agreements' objectives of addressing regulatory barriers for foreign services and service providers. In some cases these softer law approaches may reflect the policy space parties choose to retain in their own domestic systems for balancing trade and regulatory objectives. For most of the subjects, the approaches employed are also similar, suggesting that the two agreements are rendered generally compatible for the types of regulatory activities incurred by the common signatory. The two subject areas of transparency and sector-specific domestic regulation present some more legally binding and actionable elements and there are some differences between the agreements in how these elements are addressed. For these, there is more risk of regulatory fragmentation as between the agreements and questions can be raised as to how this is resolved by a national regulatory system. The paper finally considers some implications for the multilateral trading system in the WTO presented by the provisions examined in these agreements. To the extent the softer regulatory approaches emphasise the building of agency relationships over time, one can question whether this is a likely possibility to model in the larger group of WTO Members. For those subjects that present somewhat more rigorous legal approaches, one can more easily consider how these models might translate to the WTO discussion as potential benchmarks for enhancing multilateral trade in services.

The paper by Nicolas Croquet discussed at length the provisions with regard to climate change in the EU-Korea FTA and how they relate to the Framework Agreement for Trade and Cooperation between the EU and Korea. He starts by observing that before the conclusion of the EU-Korea FTA, the EU had already signed several preferential trade agreements covering climate change. Their climate change provisions fell under an environmental protection heading, an energy heading or a combination of both, and have been accompanied by a dispute settlement mechanism ranging from a mere consultation procedure to an arbitration procedure. He goes on to argue that despite the fact that the EU-Korea FTA is being presented as embodying a novel type of FTA by reason of its comprehensive nature, its direct climate change provisions still enjoy a low degree of normativity in a soft law/hard law continuum due to their generality, looseness and conditional language. In addition, its dispute settlement mechanism entails no judicial process and is limited to consultations and mediation. The soft law nature of the FTA's direct climate change provisions stands in contrast with the higher degree of normativity attached to its indirect climate change provisions: (i) provisions on tariff schedules and the elimination of customs duties in import of goods; (ii) specific energy services commitments; (iii) general exceptions to the liberalization of trade in goods; (iv) general exceptions to trade in services, freedom of establishment and electronic commerce; (v) technical barriers to trade; and (vi) transparency standards and national procedural guarantees. The low level of normativity attached to the EU-Korea FTA's direct climate change provisions is also counterbalanced by the medium level of normativity characterizing the Framework Agreement for Trade and Cooperation between the EU and its Member States and Korea of 10 May 2010 that is not yet in force. In short, the paper argues that the climate change relations between the EU and Korea are tainted by different levels of normativity that revolve around the precision of their contractual arrangements and the judicialization of their dispute settlement mechanism. These different levels of normativity in the soft law/hard law scale will influence the way in which the EU-Korea FTA's direct climate change provisions, its indirect climate change provisions and the 2010

Cooperation Agreement normatively will interact. The FTA's direct and indirect climate change provisions, on the one hand, and 2010 Cooperation Agreement, on the other hand, have regulated climate change at different functional levels: (i) by setting the ground for a general policy framework; (ii) by treating climate change as an integral part of trade in goods, trade in services and freedom of establishment, in other words, as the object of international trade; (iii) by treating climate change as a ground for legitimizing restrictions on international trade, whether on the import of goods, on trade in services or as a technical barrier to trade; and finally (iv) as a trigger of good governance and good administrative standards in the Contracting Parties' respective laws, including therefore in their adoption and enforcement of climate change legislation. How these different approaches will converge is still an out-standing question which needs to be addressed in future dialogues.

The paper by Bernadette Andreosso-O'Callaghan analysed a specific case study on the regulatory implications of the EU-Korea FTA and its potential to harmonize standards. She focuses on the mechanical engineering industry since the mechanical engineering industry has played (and still plays) a crucial role in terms of economic growth and development in both Korea and a number of EU countries. During the negotiations leading up to the signing of the EU-Korea FTA, this industry was singled out as a key player in EU-Korean trade. In particular, trade liberalisation between the two entities would allow this industry to be the major industrial beneficiary from the agreement. Indeed, this is an industry characterised by a myriad of standards, technical regulations, market entry administrative procedures and rules related to intellectual property rights. The development of these standards, as the paper shows, has proliferated in the last decades. Paving the way to overcome these obstacles provides great opportunities for trade. Although standards and technical regulations are issued in the interest of the final consumer, they do generate numerous costs for mechanical engineering firms, in particular for SMEs, as well as for importers. These costs represent additional market entry barriers. Within the EU several actions have been taken to harmonise standards and regulatory measures, in particular through the new Machinery Directive. The objective of this paper was therefore to assess the extent and impact of these regulatory obstacles in the mechanical engineering industry. The paper starts with the observation that the increased integration through trade has led to a degree of harmonisation in the area of standards and regulatory measures. For example, she notes that Korea's FTA strategy has led to simplified export procedures and documentation. Exported products do not require any more an export license issued by a foreign exchange bank and the Ministry of Knowledge Economy helps exporters by making the information about trade restrictions readily available. In addition, the paper notes that a plethora of EU directives aimed at harmonizing the EU market in the mechanical engineering area can be seen as facilitating Korean exports of mechanical engineering products onto the EU market. Overall the paper finds the FTA is a strong force in harmonizing standards and opening up markets.

The paper by Kerremans, Adriaensen and Reykers aimed to better understand how specific policy outcomes in the FTA came about and the role of trade administrations herein. The paper starts with an assessment of the current literature on the EU-Korea and argues that a large part of the research focuses on the geo-political drivers of the trade agreement and stresses the deep economic motivations behind this trade agreement. Other studies, they show, have looked more into the content and the process of the negotiations, but



have largely focused on the politicized issues. While these studies provide us many insights in the FTA, they cannot explain the outcomes for the many issues in the agreement on which little politicization or societal mobilization drove the policy process. How to understand the exemption of certain tariff reductions that were not being subject to a heated public debate? It is here that the functioning of the domestic trade administration may be important, and its capacity to draft trade policy proposals that do not have to be politicized at all. With such a capacity, trade administrations may be better able to calibrate their policies to what is economically optimal for both the winners and losers from trade liberalization, whether they have been politicized or not. In their paper, they explore to what extent the variation in tariff concessions made by both the EU and Korea reflect the variation that exists in the competitiveness of the products covered by these concessions, and this for all eight-digit tariff lines. Since free trade agreements aim at liberalizing substantially all the trade between the parties, they focus on the length of the periods in which the tariffs are dismantled in the process of implementing the agreement. The authors observe an interesting difference between the EU and Korea that can be explained by the different ways in which their trade administrations are linked to sectoral interests. They particularly note the EU's inherent advantage as a multi-level system in which both the Commission trade administration and the trade administrations in the EU member states jointly affect the EU's ability to calibrate its trade policies to the competitiveness of its producers. Following from this they provide several recommendations with regard to managing knowledge and information during trade negotiations.

#### *EU-REPUBLIC OF KOREA COOPERATION: REGULATORY AND POLICY ISSUES*

A second set of papers focuses on political and regulatory cooperation with a focus on the areas of security (arms trade and control), chemical regulation, environmental regulation, education, development co-operation and industrial development.

The paper by Ramon Pacheco Pardo and Shin Dongmin discussed arms trade and control and counterterrorism. For decades, European Union and Korea have been developing their regulatory approaches to establish domestic frameworks conducive towards better regulation of arms trade and control and counterterrorism. Since the 9/11 terrorist attacks, both the EU and Korea have increased efforts to improve and fine-tune their regulatory frameworks. The paper discussed at length the emergence, development, convergence and divergence of these regulatory approaches. In a first part, they discuss the focus of each party. They show that the EU focuses on multilateralism, helping states to reduce their stocks of arms, implementing measures to address illegal demand, and supporting strengthening the rule of law in unstable countries to curb the demand for small arms and light weapons (SALW). Multilateralism and cooperation are therefore the preferred tools for the EU in the area of arms trade and control. For Korea, disarmament and non-proliferation activities, international cooperation to strengthen the global regime, activities in the field of conventional weapons, and disarmament and non-proliferation activities within the UN are the key tenets of its efforts to address proliferation of weapons of mass destruction (WMD). As for SALW, Korea applies its Foreign Trade Act to deal with them. This act refers to the Wassenaar Arrangement as one of its legal bases. In the area of counterterrorism, the EU focuses on

strengthening national capabilities, facilitating European cooperation and developing collective capability. The EU also promotes international partnership to fight terrorism. Multilateralism and cooperation again emerge as central aspects of the EU's approach to a security issue. In the case of Korea, cooperation with international organisations, bilateral cooperation, and strengthening domestic systems are the main tools in the area of counterterrorism. The paper shows in detail that the regulatory approaches of the EU and Korea to arms trade and control and counterterrorism have both similarities and differences. By building on the former while addressing the latter, Korean and European officials can strengthen the respective regulatory frameworks. In addition, the authors argue, collaboration between the EU and Korea can help to develop, implement, and monitor a more sophisticated international regime in these areas.

The paper by Katja Biedenkopf investigated chemicals regulation in the European Union and Korea. Both jurisdictions have shown an increased level of regulatory activity in recent years with the EU developments preceding the Korean by only a few years. Also here, regulatory approaches have commonalities but also differences. The paper argues that EU chemicals regulation had effects on policy developments in Korea and it explores opportunities for enhanced, mutually beneficial EU-Korean cooperation. The paper demonstrates that the similarities between EU and Korean chemicals regulatory developments are a (partial) result of market interconnectedness, mutual awareness and lesson-drawing. However, structural regulatory cooperation between Korea and the EU is found to be in its infancy. It is relatively ad hoc, patchy and driven by Korean demand. The paper outlines options for enhancing cooperation from the technical to the political level. A working group on chemicals that was established through the EU-Korea Free Trade Agreement is a start and demonstrates the recognition that regulatory cooperation is important. It bears the potential to provide a formal framework for strengthened EU-Korea cooperation. However, in an attempt to further enhance and foster cooperation, the paper argues that additional structures and personal links are needed. These do not need necessarily to be highly formalised but a designated person in the main involved institutions would help setting up and fuelling such dialogue. Such persons could act as a bridge between technical and regulatory experts in Korea and the EU. Large parts of regulatory cooperation depend on persons that deal with detailed policy-related questions and their implementation rather than on high-level political agreements. High-level political commitments are an important component, preparing the grounds for regulatory cooperation but it is equally important that the individuals that work on the policy on a day-to-day basis fill the political commitments with concrete actions. The paper further explores areas in which and options for how this could be done. The early stage of Korean chemical policy reform provides a good opportunity for cooperation at an early stage of the policy cycle. This could help avoiding the adoption of barriers to trade and regulatory differences, which would be more difficult to iron out at a later stage of the process.

The paper by Stefan Niederhäfner and Chan Song Lee looks at climate policy. The paper compares the EU Emission Trading System (ETS) and Korea's Target Management System (TMS) with two goals, namely to evaluate the potential for successful CO<sub>2</sub> mitigation in each system and investigate the compatibility of the EU ETS and the Korean TMS to assess possibilities for regulation transfer and co-operation. Both systems address 'heavy emitters', cover more than 50% of their total territorial CO<sub>2</sub> emissions and try to realize their reduction

targets through an approach that goes beyond classic command-and-control policy. The paper explores the regulatory framework of both regulatory settings, explains the decisions that led to the different approaches against the backdrop of their institutional, political and cultural contexts, and evaluates overall performance. The analysis reveals that both systems have not reached their mitigation potential and explores the shortcomings responsible for this failure. The EU tried to secure its 8% Kyoto protocol reduction commitment by establishing a system that will help to reduce GHG emissions even further. The EU ETS aims to establish a cap-and-trade system, which utilizes market mechanisms to achieve the reductions. The paper shows that steering the system towards actual reduction, however, has so far been unsuccessful due to a GHG emissions cap that was set too high and slow reaction time to the global economic slowdown. Korea from its side tried to establish itself as a frontrunner in climate change activities by combining environmental efforts with an enhancement of its economic prospects and its global influence. The Korean TMS establishes a regulatory setting based on reductions against business-as-usual projections. At the centre of this system are annual negotiation cycles, in which the government and private operators closely co-operate to decide company-specific reduction targets together. However overall, the system's performance has so far been unsatisfactory due to insufficient target setting exacerbated by a weak penalty system. Subsequently the paper explores areas of possible collaboration and co-operation, both in a bilateral and multilateral (global climate change regime) context. Specifically, the paper describes how the EU and Korea could establish CO<sub>2</sub> emissions allowances trade between the two systems and elaborates on how the Korean TMS could better be integrated into the global ETS, as promulgated by the Kyoto-Protocol. Furthermore, the EU's potential to support the adoption of the Korean TMS model as a pre-ETS system to mitigate GHG emissions are investigated, both within the EU and as an EU foreign-policy tool.

The paper by Sang-Duk Choi focuses on transnational mobility policies in tertiary education and describes a major new initiative in the context of Asian higher education. The purpose of this paper was to examine the Korean experiences in the recent formation of the CAMPUS (Collective Action for Mobility Program of Universities Students) Asia as a trilateral- university cooperation between Korea, Japan and China. It explored features of education policies under the influence of globalization in order to discuss the changing policy issues in Korean higher education as well as the government's supports for the internationalization of Korean universities. Secondly, the paper investigated the features of CAMPUS Asia program, stressing the benefits of regional cooperation between Korea, Japan and China in the rise of East Asian economy. The Korean government has played a leading role in the creation of the CAMPUS Asia program which was launched by the agreement between Korea, Japan and China in 2011. Thirdly, it examined the responses from participating universities in Korea based on the recent survey in order to support further improvements of the CAMPUS Asia Program, after the pilot project (2011-2015). This assessment aims to contribute to a better understanding of how the system works and the potential to expand beyond the Asian context and foster collaboration with similar programs in the European Union.

The paper by Axel Marx and Jadir Soares on Korea's development cooperation policy analysed Korean development cooperation and compares it to the EU in order to identify complementarities and differences. This analysis is framed in the broader post-Busan context of triangular cooperation and the OECD agenda on the

division of labor in development co-operation. The paper starts from the European Union's desire to "improve the tools of global governance" which has led it to take a vested pursuit in becoming an active and leading actor in global economic development and development co-operation. In order to achieve its development objectives the EU develops partnerships. In an increasingly multi-polar and polycentric world the choice of partners increases. Partners, which in turn, are networked and linked to other partners. Korea has emerged as an especially interesting partner to further develop partnerships in the context of development co-operation. Korea is not only an exceptional example of sustained economic development which in a few decades moved from being a recipient country in the context of development cooperation to a donor country. Korea has also taken a leading role in pursuing actively the advancement of the '(global) development agenda'. At its 2010 Seoul summit, the G-20, then led by Korea, agreed to the so-called "Seoul Consensus" on development policy which aims to replace the Washington Consensus. In 2011 Korea hosted the 4<sup>th</sup> High Level Forum on Aid Effectiveness in Busan which resulted in the Busan Partnership for Effective Development Co-operation. The ambitions of the EU and Korea seem to align in the context of development cooperation. At the sixth EU-Korea summit in Seoul on 28 March 2012, the two parties agreed to conduct regular policy dialogue and exchange information on their respective development programmes. In light of increasing exchanges between the EU and Korea, the paper by Marx and Soares analyzes Korean development cooperation policy in order to gain a better understanding on how it relates to, and potentially differs from, EU development cooperation. The paper discusses the context of the recent changes in the development assistance architecture caused by the entrance of new emerging donors and the rapid development experienced by Korea over the last half century, moving from a poor recipient to a emerging DAC donor. Subsequently, the paper presents the Korean objectives on development cooperation and discusses the Korean approaches to perform its assistance through different channels and types, comparing it with the European Union. Further, the paper analyses the recipients of Korean aid, both in terms of partners and sectors and discusses possibilities for further cooperation. Finally, the paper makes an assessment of the participation of Korea and the EU in South-South and Triangular cooperation.

The paper by Wolfgang Pape compared regulatory approaches to industrial development in Europe and Korea within the context of the literature on distinct forms of capitalism. He starts with the observation that, in spite of unified EU competition rules, there are considerable differences still amongst Member States. However, regulatory approaches to industrial development policies differ even more so in concept and practice between the EU and Korea in view of their divergent socio-cultural backgrounds and evolutions to date. Policies on industry at EU level concentrate mainly on competitiveness issues ranging from entrepreneurship and SME promotion to fostering R&D and innovation. Recent developments in the wake of the economic crisis have led to wider interpretations of EU economic governance beyond the European Semester and Europe 2020. Industrial development policy of highly homogenous Korea is centralised throughout the entire country, having learned from a 'Japan Model' of the developmental state and mercantilism. Post-WWII regimes exploited further the historically strong Confucian deference to top-down imposition of industrial development priorities. These policies were hardly successful in terms of GDP growth until the 1960s when the Five-Year Plans for the systematic development of the economy started to help industries to expand from import-substitution and textiles towards

chemicals, machinery and shipbuilding in the 1970s, and then from heavy to technology-intensive industries. On the basis of a largely continental legal system, the main vehicle for the implementation of these plans through selective subsidisation were the chosen *chaebol*, fast growing family enterprise-groups. With the strengthening of democracy and competition also the need of innovative entrepreneurship in SMEs has increasingly found recognition in the Korean administration, gradually reversing some of the pro-big business policies and thus reforming and opening up chances for newcomers, also from Europe. While the big *chaebol* are now globalising, their dominance at home is coming under stricter political scrutiny so that interventionist industrial policies have become more difficult to enforce. Nevertheless, along with success-stories in 'policy-guided' exports of energy-technologies (especially nuclear plants), innovation promotion and the low rate of the Korean currency are keeping its economic growth and exports at highest levels among OECD countries. This fast industrial development in Korea, the paper argues, allows highly beneficial cooperation for the EU. In this context the paper discusses the opportunities offered by the current EU Korea FTA. However, in order to fully exploit the opportunities offered by the FTA mutual understanding between EU and Korea should be significantly increased. The paper concludes that it is recommended to improve mutual information by the mass media in Korea as well as in the EU. The limited understanding of the EU in Korea is to a high degree due to the one-sided focus over the Pacific Ocean rather than over the Eurasian continent. Also European media have room and now with the exemplary FTA in place more than ever reason to identify and better inform about Korea. Secondly the paper argues that European businesses should recognise the role that Korea can play as a gateway to China and Japan. In order to achieve this it would be an option that European industrial associations and lobbies open their membership to Korean representatives, as it would greatly improve the flow of information in both directions.

#### *EU-REPUBLIC OF KOREA COOPERATION: REGIONAL AND INTERNATIONAL ISSUES*

In a final set of papers, the authors explore the broader geo-political context of current EU-Korea relations. The paper by Christoph Bluth and Neil Winn focused on the Democratic People's Republic of Korea (DPRK) as a security threat. They note that for many in the West, North Korea is a secretive, reclusive and enigmatic country, a "rogue state" that threatens the world with its nuclear programme and ballistic missiles. Unlike the Central European countries and the former Soviet Union, the North Korean communist regime did not fall, but rather consolidated its hold on power as it became increasingly isolated. North Korea's nuclear programme precipitated a major international crisis in the 1990s almost resulting in military conflict with the United States. Since then there have been efforts by the international community, led by the United States and Korea, to engage North Korea and mitigate the perceived threat through multilateral negotiations to achieve disarmament in return for political and economic support for the DPRK. These efforts have failed to significantly change the foreign policy behaviour of the DPRK or transform the security crisis that still persists on the Korean peninsula. Different approaches to this crisis, combinations of sanctions, military threats on the one hand and generous economic support and efforts to involve the DPRK in a multilateral security framework, on the other hand, have failed to achieve the desired objectives. Hence, efforts to mitigate the North Korean security problem have not yielded any

results, and despite the very severe economic problems experienced by the DPRK its leadership has not followed a strategy that would maximize development aid. The analysis presented in the paper demonstrates that the primary security risk for the regime is its own survival that is threatened by its lack of legitimacy and the prospect of losing control over its population. It is caught in a trap that results from the inability to develop the economy without fundamental reform, which in turn is considered to threaten the survival of the regime. The authors argue that the existence of an external enemy in the form of the United States is critical for the legitimacy in the regime, but the leadership also needs to engage with the United States to mitigate the external security threat and gain access to economic resources. Another critical factor that impacts on the North Korean regime is its complete failure to internalise international norms, so that any engagement with international institutions remain purely tactical. The paper argues that one of the key problems of efforts to engage with North Korea is the preoccupation with the nuclear programme and security in which coercive means dominated. The concept of "normative power" that a significant body of literature has identified with the European Union offers the potential for an alternative form of engagement with North Korea. By participating in the creation of free enterprise zones like that currently in Gaesong and widening various elements of non-military engagement, there is the potential for the diffusion of norms through political and economic cooperation. In this vein, the paper proposes a new initiative involving the European Union together with the other five powers engaged with North Korea could be used to develop a fundamentally new approach to dealing with the crisis on the Korean peninsula. The paper further elaborates this normative strategy.

The paper by Deok Ryong Yoon focused further on North-Korea and examined North Korea's trade patterns. The paper shows that, even though North Korea has never attempted to transform the economic system from planning to market economy, market mechanism has spread gradually after the collapse of its economy in the beginning of 1990s. Since 1999 North Korea's GDP and trade volume have increased continuously except for those during the crisis years. Recently its trade volume has recovered to the level before the economic collapse. This paper subsequently tries to analyze on which industries North Korean trade competitiveness is based and whether its trade pattern follows the general pattern of industrial restructuring and development in transition countries. Finally the paper discusses the implications for EU's North Korea policy. To answer the first two questions, the paper applies the revealed comparative advantage (RCA) index. The RCA index is calculated using mirror statistics based on UN COM-trade data over the time period from 1990 to 2011. North Korea has undergone economic restructuring over these two decades. The changes of RCA index reflect North Korea's trade competitiveness as well as its industrial structure. Its trade statistics show that its foreign trade, including Sino-DPRK trade, is market-based. North Korea's economic restructuring seems to be very slow compared to that of other former socialist countries. Although the trade volume has recovered recently to the level prior to economic collapse, such restoration was done only through the export of natural resources to China. The North Korean government's willingness to reform external economic and financial conditions is prerequisites to rapid and successful economic rehabilitation. Considering its economic and political conditions, the EU is best qualified to be the potential donor of such technical assistance. According to the RCA indices of North Korea's exports to the EU, the EU already has influence on North Korea's industrial restructuring.

The third paper of this part by Sunhee Park focused on the Asia-Europe Meeting (ASEM) which was officially established in 1996. ASEM is an interregional forum which consists of the European Commission, the 27 members of the European Union, the 10 members of the ASEAN Secretariat, China, Japan, Korea, India, Mongolia, Pakistan, Australia, Russia, New Zealand, Bangladesh, Norway and Switzerland. This paper aimed to specifically explore the ASEM's enlargement policy centered on the implication of 2010 enlargement with special emphasis on the Russian accession to ASEM and Korea's position on this issue. The enlargement in 2010 to include not only Australia and New Zealand but also Russia had significant implications for the bi-regional approach which upholds ASEM's working process. The enlargement to Russia and less so for Australia and New Zealand, is expected to bring challenges to the region-based coordination process of ASEM especially considering the fact that Russia has an indefinite identity between Asia and Europe. As a consequence the paper addresses the question of whether this enlargement would affect the region-to-region approach, the *modus operandi* of ASEM. This paper argues that the 2010 enlargement was not aimed at changing ASEM's working process nor its bi-regional inter-regionalist format. In other words, ASEM had no intention of fundamentally changing its working process to some form of trans-regionalism, but was mindful of the benefits from accepting Russia's membership. ASEM's seeming inclination to trans-regional inter-regionalist format can be, according to the author, interpreted in a wider geo-political context. The accession of Russia can be regarded most persuasively in a context of counterbalancing the US' hegemonic stance and also to counterweight against unrivaled China in ASEM which is becoming the potential threat to ASEM's existence. The paper also observes Korea's stance on the Russian accession to ASEM including the consecutive enlargement of ASEM from 2008. In particular, it analyzes the outcomes of Russia's accession such as stabilized energy supply by the Russia-North Korea-Korea natural gas pipeline and the easing of tension on the Korean Peninsula together with the changing perspective of ASEM through its enlargements.

### 3. EU-REPUBLIC OF KOREA COOPERATION: RECOMMENDATIONS

One of the specific goals of the project, on which this volume is based, was to develop a set of recommendations. As a result all contributors were urged to discuss the policy implications of their research and develop recommendations. This has led to a set of detailed recommendations at the end of most papers. In this section we aim to consolidate these recommendations in a set of overall recommendations.

First of all, many authors develop specific proposals with regard to **information exchange** which can inform the policy-making process on a range of policy issues and reduce transaction costs related with information and knowledge generation. The importance of information exchange in transnational regulatory cooperation has been highlighted by several leading scholars and policy reports. For example, two recent reports, jointly published by UNIDO and the Leuven Centre for Global Governance Studies, on *Networks for Prosperity* (Marx et al., 2011; 2012) argued that information exchange and knowledge management play a key role in achieving development goals. Also scholars international relations scholars such as Slaughter (2004) and Haas (19992) point to the importance of information exchange in transnational regulatory networks.



Information exchange can be about many different issues ranging from scientific fact exchanges as in the case of environmental or chemical policy to more strategic information exchange in the context of the FTA. Concerning the former Biedenkopf, in the context of chemical policies, explores several concrete options for the sharing of data related to chemical policy implementation. The exchange of chemicals-related data could gain importance once Korea has adopted its Act on the Registration and Evaluation of Chemicals. When Korea begins requesting data from producers, the format and type of information requested becomes an important aspect. On the one hand, producers will find compliance with Korean rules less burdensome if they are in the same format and the same type as they have to submit to the EU, since many companies operate in both markets or are part of a supply chain feeding into both markets. On the other hand, authorities conducting chemical evaluations could benefit from sharing chemical data and results of risk assessments. Through such cooperation, economies of scale could be reached. The sharing of data would prevent the duplication of testing.

The latter, more strategic information exchange, can occur with regard to the FTA. As Kerremans et al. point out information and the breadth of information-gathering is crucial for policymakers' ability to calibrate trade policy outcomes to the preferences of more than just the politicized interests at home. Hence, the management of information and the institutional channels through which such information has to flow is of crucial importance. Political systems can learn in this regard from each other. Both the EU and Korea for example face the challenge of incorporating the interests of Small and Medium Sized Enterprises in their policy process as is also highlighted in the contribution by Bernadette Andreosso-O'Callaghan. Each has their own experiences, successes and failures in engaging with private actors and an exchanges of best practices.

A final specific recommendation concerning information exchange concerns not so much information exchange between policy-makers and policy-stakeholders but more the general raising of knowledge and awareness through public media. As Wolfgang Pape notes a special recommendation with regard to information exchange ought to be addressed to the mass media in Korea as well as in the EU. The limited understanding of the EU by the general public and thereby also small business in Korea is to a high degree due to the one-sided focus of any international reporting over the Pacific Ocean rather than over the Eurasian continent. Korean media covers only to a very limited extent information on the EU. This observation corresponds with findings Martin Holland and colleagues collected on the the presence of EU reporting in Asian newspapers. They showed that media coverage on the EU is very limited in Asia (Holland & Chaban, 2005). Also European media have room to better inform about Korea.

Secondly, several authors identify the potential for different types of **mutual policy learning**. Several opportunities arise here. For example, while the EU has introduced a fundamental chemical regulatory reform (REACH), Korea is in the process of reforming its chemicals policy. This means that Korea could learn from EU experiences and build upon them. With the direction in which its reform efforts seem to be moving, Korea is entering an area that is new for its domestic regulation. Lessons from the EU that went through a similar process could help Korea avoid some of the flaws and unintended consequences of REACH. Also in other emerging policy areas addressed in this volume such as development co-operation, transnational student exchange in tertiary education and emissions trading opportunities for policy learning arise. In order to promote **mutual**



**learning** authors make several suggestions with regard to structuring cooperation ranging from institutionalized forms of structured dialogue to informal networking and exchanging policy makers to discuss policy innovation. The **structured dialogue** can take several institutional forms and build on existing initiatives. Cho argues in the context of the FTA, that the Trade Committee of the Agreement needs to play a pivotal role in the implementation of the FTA by consistently monitoring the implementation and generate mechanisms for learning with regard to implementation gaps. The Trade Committee and other lower level consultation groups should be run as defined in the Transparency Chapter of the Agreement. Sectoral committees and working level meetings are needed to be held at least once a year to consistently assess whether the FTA is implemented as agreed. The importance and potential of the institutional mechanisms foreseen in the FTA is also highlighted in the context of chemical policy. Here, the FTA established a working group as an institutional platform for the sharing of experiences and best practices. The stated aim of this group is to exchange information and to cooperate in an attempt to avoid regulatory divergences and non-tariff barriers to trade. The working group comprises government officials from both sides. The challenge will be to make efficient use of the opportunity provided by the working group. Pape also makes the suggestion to start an institutionalized Regulatory Reform Dialogue in order to fully exploit the opportunities of the FTA and enhance regulatory cooperation. All these recommendations correspond to more general arguments made by authors such as Slaughter (2004; Slaughter and Zaring, 2006) who stress the need to 'embed' and institutionalize social relations in networks in order to facilitate learning (Giraldi and Radaelli, 2012). The purpose of these networks are to implement agreements and establish structured forms to address issues related to the implementation of these agreements.

However, mutual learning can also take place via more informal mechanisms and meetings. Besides the existing venues for collaboration Pardo, in the context of regulatory approaches towards arms trade, suggest two further mechanisms to enhance cooperation that would be relatively simple to implement in the context of arms trade control but possibly also other policy-areas. First of all, an annual (or half-yearly) policy consultation meeting on arms trade and control and/or the counterterrorism at the director-general level to share experiences, and to develop new areas to cooperate with each other, thus increasing 'cross fertilisation'. Such policy consultation meetings are already taken place as is exemplified in the paper by Marx and Soares on development co-operation. In this policy area consultation meetings have taken place in order to exchange information on policy initiatives and strategies.

Secondly, Pardo suggest to dispatch working-level officials of Korea as observers to a variety of EU arms trade and control and counterterrorism initiatives. This could easily lead to 'cross fertilisation' and even closer cooperation as Republic of Korea officials better understand the rationale behind the EU's regulatory framework and its implementation. A similar argument, for exchanging officials is also made by Biedenkopf with regard to chemical policy-making. Since the working group meetings, embedded within the FTA, take place only once a year or every other year, complementing it with less formalised venues of cooperation seems advisable. This form of collaboration can take place at different levels of hierarchy and detail. While the exchange of information on broad concepts and fundamental ideas of regulatory design could be discussed in a few high-level meetings, technical details are more numerous, occur more frequently and are best dealt with by technical level

experts. Cooperation on a more frequent and ad hoc basis appears more conducive in these cases. The latter type of more informal exchange is still in its infancy and could be further developed. Similar arguments are forwarded in the papers by Niederhafner and Song Lee concerning climate change policies and emission trading systems and Sang-Duk Choi on higher education policies.

All these recommendations with regard to mutual learning are framed within a context of harmonizing policies and generate convergence of policies and standards. However, it should be noted that there are limits to regulatory convergence as David Vogel (2012) as highlighted in his recent book. Regulatory standards and frameworks are not only the result of international developments. Many factors come into play including the role of local domestic interests, attitudes towards the role of government, the role of political systems, the role of cultural values and different preferences. Hence, although a certain degree of policy convergence is preferable, one should not expect full harmonization on all policies. In addition, one should take into account an efficiency argument when setting up new collaborative institutions. Given the exponential growth of bilateral commitments in different forms and the bureaucratic and institutional commitments flowing from them it will become, capacity-wise, impossible to comply with all commitments. Hence coordinated and concentrated action will be of key importance. How this will evolve in the coming years is an outstanding question.

Thirdly, several authors focus in their recommendation on the role of non-governmental **stakeholders** in fostering and contributing to strengthening the EU-Korea relations. Since transnational regulatory governance implies an opening up of the policy process to different actors leverage can be gained from strengthening relations between stakeholders. This refers to broadening co-operation to non-state actors and developing mechanisms to support such cooperation. This can take many forms and involve a diversity of stakeholders. The Public Diplomacy program of the European Commission which supported this project is one form which stimulates this process. Several authors suggest that besides official channels or dialogues, Korea and the EU could come up with various opportunities, such as programmes for exchange of private sector personnel or academic gatherings (workshops or seminars) to help understand each other better. Especially in the context of highly technical policy areas the support of scientific dialogue and cooperation could be mutually beneficial for the EU and Korea. Also with regard to business associations mutual cooperation could be achieved through opening up memberships. Pape suggests that European industrial associations and lobbies open their membership to Korean representatives, as most recently done by the European Automobile Manufacturers Association through admitting Hyundai as a member. Such openness can greatly improve the flow of information in both directions.

Finally, several papers explore possibilities to further strengthen **international cooperation** on several issues. Many contributors stress the importance of bilateral cooperation in a multilateral or regional international context. Sunhee Park discusses at length ASEM as one such venue. Cho highlights cooperation in the context of the WTO and stresses that Korea and the EU should stick to the principles of free trade, cooperate to reject protectionism, and put joint efforts to achieve the conclusion of the WTO negotiation. Another front for international cooperation which is identified by Cho is the G20 summit. The G20, despite criticism, is one of the premier intergovernmental congregations deciding global governance and solutions for global economic issues. Korea chaired the 2010 Seoul Summit, dedicating to play a bridging role between developed and developing

nations as is mentioned by Marx and Soares. Pardo also suggest that regulatory cooperation between the EU and Korea can be advanced through mechanisms already in existence such as international organizations. His suggestion for closer collaboration with regard to arms trade and control policy is the Organization for Security and Co-operation in Europe (OSCE). Korea has maintained a close cooperative relationship with the OSCE as a member of the OSCE Asian Partners for Co-operation since 1994. Korea maintains permanent officers charged with matters related to the OSCE in Vienna. Finally, with regard to climate policies there are several venues for collaboration on the international level as is highlighted in the paper by Niederhafner and Song Lee. They argue that there is significant potential for cooperation at the global level given that both the EU and Korea aim to play a leading role in climate mitigation and green growth strategies. The EU has a longstanding track record in climate policies. This ambition is shared by Korea. One of the ten core policy tasks within the National Green Growth Strategy is to become a global leader and role model in these policy areas. The EU and Korea could develop a strategic approach to strengthen each other's influence and support common goals within the global climate change negotiations. In geopolitical terms the paper by Winn and Bluth propose for the EU to take leadership towards North-Korea and develop, together with the other five powers engaged with North Korea, a fundamentally new approach to dealing with the crisis on the Korean peninsula based on its normative power. This also corresponds to similar recommendations made by other authors (Lee, 2012) with regard to North Korea.

#### **4. CONCLUSION**

EU - Korea relations constitute a prime example of what academics refer to as a new form of transnational governance, namely governance by transnational regulatory networks. These are emerging co-operative structures which are outside the realm of established multilateral frameworks. This form of transnational co-operation serves at least three functions. First, they provide resources and build capacity to enhance economic development. Key resources include financial resources such as (foreign) investments and lowering transaction costs related to trade. Secondly, these networks play a key role in harmonizing standards and policies. Thirdly, they facilitate policy learning, information exchange and dissemination on a range of policy issues. Often, economic relations and integration, such as free trade agreements, form the backbone of this type of collaboration.

The importance of the EU-Korea FTA to establish an institutional framework to develop closer collaboration and a genuine strategic partnership emerges out of this volume. This corresponds to the assessment of other authors (Yun, 2012; see Kelly, 2012 for a dissenting view). This volume also highlighted this potential as well as many other aspects related to EU-Korea regulatory and political cooperation. All contributions focus on the potential and importance for further collaboration.

A key question for the near future will be whether these regulatory networks will endure and deepen. In a world which is witnessing a proliferation of trade and other economic agreements it is impossible to further deepen regulatory relations with each one of the strategic trade partners. Some partners will become more strategic than others. Hence, the challenge transnational regulatory networks in general and the EU-Korea network in particular pose is twofold. On the one hand, what is at stake is whether these transnational networks

are efficient and sustainable from an institutional point of view. On the other, the distributive consequences of such regimes should ideally be Pareto-optimal for partaking actors. It remains an outstanding question whether the latter is the case. In addition, these two aspects are interrelated as is suggested by many leading international relations scholars. Keohane (1984, pp. 51-52) noted three decades ago that „*intergovernmental cooperation takes place when the policies actually followed by one government are regarded by its partners as facilitating realization of their own objectives*” (see also Drezner, 2006 for a similar assessment). In other words, cooperation will be Pareto optimal and result in enduring institutions if it proves to be mutually beneficial. As a result, outstanding questions remain with regard to the efficiency of regulatory harmonization and the capacity to develop mutually beneficial supranational institutions, or alternative governance forms, for managing transnational regulatory networks such as the EU-Korea FTA and Framework agreement. Future research will shed light on this.

## References

- Börzel, T. (2011) 'Networks: Reified Metaphor or Governance Panacea', *Public Administration*, 89,1, pp. 49-63
- Brown, C. (2011) 'The European Union and Regional Trade Agreements: A Case Study of the EU-Korea FTA', pp. 297-308, in, Herrmann, C. and J.P. Terhechte (eds.), *European Yearbook of International Economic Law* 2011, 2,
- Bruszt, L. and G. A. McDermott (2009) "Transnational Integration Regimes as Development Programs", in L. Bruszt and R. Holzhaacker (Eds.) *The Transnationalization of Economies, States, and Civil Societies*, New York: Springer Political Economy Series, pp. 23-59
- Cremona, M. (2011) 'The European Union and Regional Trade Agreements', pp. 245-268 in, Herrmann, C. and J.P. Terhechte (eds.), *European Yearbook of International Economic Law* 2011, 2, pp. 49-63
- Djelic, M.L. and K. Sahlin-Andersson (2006) *Transnational Governance. Institutional Dynamics of Regulation*. Cambridge: Cambridge University Press
- Drezner, D. (2006) *All Politics is Global: Explaining International Regulatory Regimes*. Princeton: Princeton University Press
- Gilardi, F. & C. Radaelli (2012) 'Governance and Learning' in, D. Levi-Faur (ed.) *The Oxford Handbook of Governance*. Oxford: Oxford University Press.
- Haas, Peter M. (1992) "Epistemic Communities and International Policy Coordination." *International Organization*. Vol. 46. No. 1. pp. 1-35
- Holland, M., and N. Chaban, *The EU Through the Eyes of the Asia-Pacific: public perceptions and media representations*, NCRE Research Series No.4, National Centre for Research on Europe, University of Canterbury, 2005, 102p
- Horng, Der-Chin . 'Reshaping the EU's FTA Policy in a Globalizing Economy:The Case of the EU-Korea FTA ' *Journal of World Trade* 46, no. 2 (2012): 301–326.
- Jordana, Jordana, David Levi-Faur. 2012. "Regional Integration and Transnational Regulatory Regimes: The Polycentric Architecture of Governance in Latin American Telecommunications", Paper presented at the EUI-IDB Conference "Fostering Regional Regulatory Integration – Learning Across Regions", Washington DC, February 2012
- Kelly, R. (2012) 'Korea-European Union relations: beyond the FTA?', in, *International Relations of the Asia-Pacific*, 12, 1, pp. 101-132.
- Keohane, R. (1984) *After Hegemony: Cooperation and Discord in the World Political Economy*
- Kwon, G. (2009) 'A United Korea? Reassessing North Korea Risks', in *Goldman Sachs Global Economics Paper No. 188*. Available at: [http://www.nkeconwatch.com/nk-uploads/global\\_economics\\_paper\\_no\\_188\\_final.pdf](http://www.nkeconwatch.com/nk-uploads/global_economics_paper_no_188_final.pdf)
- Lee, M. (2012) 'A step as normative power: the EU's human rights policy towards North Korea', in, *Asia Europe Journal*, 10, 1, pp. 41-56
- Lobel, O. (2004) 'The renew deal: The fall of regulation and the rise in governance in contemporary legal thought', in, *Minnesota Law Review*, 89: 342–470.
- Lobel, O. (2012) 'New Governance as Regulatory Governance', in, D. Levi-Faur (ed.) *The Oxford Handbook of Governance*. Oxford: Oxford University Press.

Martinez-Diaz, L. & N. Woods (2009) *Networks of Influence*. Oxford: Oxford University Press

Marx, A, Kitaoka, K., O'Reilly, C. & J. Fuentes (editors)(2012) *Networks for Prosperity. Connecting Development Knowledge Beyond 2015*. Vienna: UNIDO and Leuven Centre for Global Governance Studies.

Marx, A. Kitaoka, K. & A. MacGillivray (eds.)(2011) *Networks for Prosperity. Achieving Millennium Development Goals through Knowledge Sharing*. Vienna: UNIDO and Leuven Centre for Global Governance Studies.

Rhodes, R. (2012) 'Waves of Governance', in, D. Levi-Faur (ed.) *The Oxford Handbook of Governance*. Oxford: Oxford University Press.

Rodrik, D. (2011) *The Globalization Paradox. Why Global Markets, States, and Democracy Can't Coexist*. Oxford: Oxford University Press.

Slaughter, A. & D. Zaring (2006) Networking goes international: An update, in, *Annual Review of Law and Social Science*, 2, pp. 211-229

Slaughter, A.-M. (2004) *A New World Order: Government Networks and the Disaggregated State*. Princeton: Princeton University Press

Torring, J. (2012) 'Governance Networks', in, D. Levi-Faur (ed.) *The Oxford Handbook of Governance*. Oxford: Oxford University Press

Verdier, P.H. (2009) 'Transnational Regulatory Networks and Their Limits' in, *Yale Journal of International Law*, 34, pp. 114-172

Vogel, D. (2012) *The Politics of Precaution: Regulating Health, Safety, and Environmental Risks in Europe and the United States*. Princeton: Princeton University Press.

Yun, S.J. (2012) 'The EU's Common Commercial Policy and implications for Korea-EU relations', in, *Journal of Korea Trade*, 16, 4, pp. 57-71



**KU LEUVEN**



The **Leuven Centre for Global Governance Studies** is an interdisciplinary research centre of the Humanities and Social Sciences recognized as a Centre of Excellence at the Katholieke Universiteit Leuven. It hosts researchers from law, economics, political science, history, philosophy and area studies. The Centre carries out and supports interdisciplinary research on globalization, governance processes and multilateralism, with a particular focus on the following areas: (i) the European Union and global governance; (ii) trade and sustainable development; (iii) peace and security; (iv) human rights, democracy and rule of law; (v) non-state actors and global governance; (vi) space governance; and (vii) comparative federalism. It hosts the InBev Baillet-Latour Chair EU-China and the Leuven India Focus.

In addition to its fundamental research, GGS carries out independent applied research and advises policy-makers on multilateral governance and global public policy issues. It regularly organizes conferences, seminars and debates on these issues, including a summer school. GGS works with academic and policy partners from all over the world, including the European Parliament, the European Commission, the European External Action Service, the Committee of the Regions, the OECD, UNIDO, UNCTAD, the World Bank and the WTO.

For more information, please visit the website [www.globalgovernancestudies.eu](http://www.globalgovernancestudies.eu)

Leuven Centre for Global Governance Studies  
Huis De Dorlodot, Deberiotstraat 34, 3000 Leuven, Belgium  
Tel. ++32 16 32 87 25  
Fax ++32 16 37 35 47  
[info@ggs.kuleuven.be](mailto:info@ggs.kuleuven.be)









**LEUVEN CENTRE FOR  
GLOBAL GOVERNANCE STUDIES**

House De Dorlodot  
Charles Deberiotstraat 34  
3000 Leuven, BELGIUM  
Phone: + 32 16 32 87 25  
Fax: + 32 16 37 35 47  
info@ggs.kuleuven.be

[www.globalgovernancestudies.eu](http://www.globalgovernancestudies.eu)



The Leuven Centre for Global Governance Studies is an interdisciplinary research centre of the Humanities and Social Sciences recognized as a Centre of Excellence at the Katholieke Universiteit Leuven. It hosts researchers from law, economics, political science, history, philosophy and area studies. The Centre carries out and supports interdisciplinary research on globalization, governance processes and multilateralism, with a particular focus on the following areas: (i) the European Union and global governance; (ii) trade and sustainable development; (iii) peace and security; (iv) human rights, democracy and rule of law; (v) non-state actors and global governance; (vi) space governance; and (vii) comparative federalism. It hosts the InBev Baillet-Latour Chair EU-China and the Leuven India Focus. In addition to its fundamental research, GGS carries out independent applied research and advises policy-makers on multilateral governance and global public policy issues. It regularly organizes conferences, seminars and debates on these issues, including a summer school. GGS works with academic and policy partners from all over the world, including the European Parliament, the European Commission, the European External Action Service, the Committee of the Regions, the OECD, UNIDO, UNCTAD, the World Bank and the WTO.

For more information, please visit the website [www.globalgovernancestudies.eu](http://www.globalgovernancestudies.eu)